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No. 2299

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United States  
**Circuit Court of Appeals**

For the Ninth Circuit.

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COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, a Corporation, and  
KATALLA COMPANY, a Corporation,  
Plaintiffs in Error,

vs.

DANIEL S. REEDER,

Defendant in Error.

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**Transcript of Record.**

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Upon Writ of Error to the United States District Court  
of the Territory of Alaska,  
Third Division.

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**FILED**

AUG 29 1913



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Court of Appeals

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Circuit Court of Appeals

For the Ninth Circuit.

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COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, a Corporation, and  
KATALLA COMPANY, a Corporation,  
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Third Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff and Appellee,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, a Corp., and THE  
KATALLA COMPANY, a Corp.,

Defendants and Appellants.

**Names and Addresses of Attorneys of Record.**

J. H. COBB, Juneau, Alaska, Attorney for Plaintiff  
and Appellee.

R. J. BORYER, Cordova, Alaska, Attorney for De-  
fendants and Appellants.

JNO. R. WINN, Juneau, Alaska, Attorney for De-  
fendants and Appellants. [1\*]

---

*In the District Court for Alaska, Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY AND COPPER RIVER  
& NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

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\*Page-number appearing at foot of page of original certified Record.

### **Complaint.**

The above-named plaintiff, complaining of the above-named defendants, for cause of action alleges:

#### I.

The defendants are corporations duly incorporated and doing business as common carriers in the District of Alaska, and were engaged in such business at all the times hereinafter mentioned.

#### II.

That heretofore, to wit, on the 7th day of August, 1911, and for some time prior thereto, plaintiff was in the employ of the defendants as a carpenter upon the line of railway running from the town of Cordova up the Copper River into the interior of Alaska, and on said day was at work by the direction of the defendants at or near Mile 131 on said line of railway, in a certain tunnel thereon.

#### III.

That on said 7th day of August, 1911, while plaintiff was at work as aforesaid, the timbers supporting the roof of said tunnel broke and gave way, and the plaintiff was caught underneath the said falling timbers, earth and gravel, and sustained serious and permanent injuries to his person in this: that his left leg was bruised and crushed for its entire length and so maimed and injured as to be permanently disabled; [1a] that the bones and skeleton supporting the lower abdomen were broken and crushed; that by reason of said injuries, plaintiff was confined to the hospital for a period of about four months, during which time he suffered, and has ever since continued

and is still suffering the most intense physical pain; and has been incapacitated from earning a living, although the defendants continued the plaintiff upon their payrolls at the rate of five dollars (\$5.00) per day for the said period of four months, when they discharged him from the hospital and from said payrolls.

#### IV.

That the accident by which plaintiff was injured as aforesaid was caused by the negligent failure of the defendants to furnish the plaintiff with a reasonably safe place to work; that said place was unsafe and dangerous by reason of the negligent failure of the defendants to suitably timber and protect the workmen employed in said tunnel from the danger of cave-ins and falling of material constituting the roof of the bore of said tunnel. All of which was known to the defendants, or by the use of reasonable diligence could have been known by them, but was unknown to the plaintiff.

#### V.

That the plaintiff at the time of the injuries aforesaid was earning, and but for said injuries could have continued to earn, the sum of five and one-half (\$5.50) dollars per day; that by reason of said injuries he has suffered great agony, both of body and mind, been deprived of his source of living, and is incapacitated to earn a living and damaged in the total sum of twenty-five thousand (\$25,000.00) dollars.

WHEREFORE, the plaintiff prays damages in the said sum of twenty-five thousand (\$25,000.00)

dollars, together with the costs and disbursements herein incurred.

J. H. COBB,  
Attorney for Plaintiff. [2]

United States of America,  
District of Alaska,—ss.

Daniel S. Reeder, being first duly sworn, on oath deposes and says: I am the plaintiff above named. I have read the above and foregoing complaint, know the contents thereof, and the same is true as I verily believe.

DANIEL S. REEDER.

Subscribed and sworn to before me this, the 25th day of March, 1912.

J. H. COBB,  
Notary Public in and for Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 26, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [3]

---

[Summons.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY AND COPPER RIVER  
& NORTHWESTERN RY. CO.,

Defendants.

The President of the United States of America,  
Greeting: To the Above-named Defendants:

YOU ARE HEREBY REQUIRED to appear in the District Court for the Territory of Alaska, Third Division, within thirty days after the day of service of this summons upon you, and answer the complaint of the above-named plaintiff, a copy of which complaint is herewith delivered to you; and unless you so appear and answer, the plaintiff will take judgment against you for the sum of Twenty-five Thousand Dollars, the relief demanded in said complaint.

WITNESS, the Hon. E. E. CUSHMAN, Judge of said Court, this 26th day of March in the year of our Lord one thousand nine hundred and twelve and of our independence the one hundred and sixth.

[Seal]

ED. M. LAKIN,  
Clerk.

By Thos. S. Scott,  
Deputy Clerk.

Marshal's No. 363. [4]

United States of America,  
Territory of Alaska,  
Third Division,—ss.

I hereby certify and return that I received the annexed Summons on the 28th day of March, 1912, and thereafter on the 1st day of April, 1912, at Cordova, Alaska, I served the same upon the therein named Katalla Company, by delivering to and *leaving* George Geiger, service agent for said Katalla Company, a copy of said summons, together with a certified copy of the complaint filed therewith; and

thereafter on the same date I served the same upon the therein named Copper River & Northwestern Ry. Co., by delivering to and leaving with George Geiger, service agent for said Copper River & Northwestern Ry. Co., a copy of said summons, together with a certified copy of the complaint filed therewith.

Returned this 1st day of April, A. D. 1912.

H. P. SULLIVAN,  
U. S. Marshal.  
By S. T. Brightwell,  
Deputy.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 4, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [5]

---

*In the District Court for the District of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

THE KATALLA COMPANY AND COPPER  
RIVER & NORTHWESTERN RAILWAY  
COMPANY,

Defendants.

**Motion to Make Complaint More Definite and  
Certain.**

Comes now the defendant and moves the Court to require the plaintiff to make his complaint more



definite and certain in the following particulars:

I.

That the plaintiff be required to make paragraph II of complaint more definite and certain in that

A. Plaintiff be required to state if his contract of employment was in writing or if oral.

B. If in writing, to attach a copy or make said contract a part of the complaint or furnish the defendant a copy of same.

C. If said contract is not in writing, to set out in his complaint the contents of the plaintiff's contract of employment.

D. To state with what officer or what agent the plaintiff entered into said contract of employment, and to state if said contract of employment was with an officer or agent of the Katalla Company or the Copper River & Northwestern Railway Company.

E. That the plaintiff be required to state the nature of his employment or work; that is, the nature or kind of [6] work he was to perform and was performing under his contract of employment at the time of receiving his injury.

F. That plaintiff be required to state what officer or agent the plaintiff was under direction on the 7th day of August, 1911, when injured and what orders had been given or directed to plaintiff and by whom.

G. That plaintiff be required to state what agent or employee of the defendant or defendants or what person discharged plaintiff from the hospital.

II.

Referring to paragraph III of the complaint, that

said paragraph be made more definite and certain in that:

A. Plaintiff be required to state the nature and kind of work or employment the plaintiff was engaged in on the 7th day of August, 1911, as referred to in lines 1 and 2 of paragraph III.

B. That plaintiff be required to state what bones and what part of the skeleton supporting the lower abdomen were broken and crushed.

### III.

Referring to paragraph IV, that said paragraph be made more definite and certain in that it state:

A. Plaintiff be required to state in what way or manner defendant or defendants failed or neglected to suitably timber and protect the workmen employed in the tunnel from danger of cave-in and falling of material constituting the roof of the bore of said tunnel.

R. J. BORYER,  
Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 3, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [7]

United States of America,  
District of Alaska,—ss.

I, G. Geiger, being first duly sworn, deposes and says: That I am the Superintendent of Katalla & Copper River Railway Companies, defendants named in the above-entitled action, and that the foregoing motion is true as I verily believe.



Subscribed and sworn to before me this the —  
day of ———, A. D. 1909.

\_\_\_\_\_,  
Notary Public for the District of Alaska. [8]

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY AND COPPER RIVER  
& NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Bill of Particulars.**

Now comes the plaintiff and files this, his Bill of Particulars, in accordance with the ruling of the Court, as follows:

1. The contract of employment was oral.
2. The contents of the contract was simply to do such work as he might be directed in his line of employment and providing for the compensation stated.
3. Plaintiff cannot give the name of the officer or agent by whom he was employed and does not know of his own knowledge whether he was an officer or agent of the Katalla Company or of the Copper River & Northwestern Railway Company, but he believes and alleges on such belief that it was an agent or officer of both.
4. On the 7th day of August, 1911, at the date

plaintiff received the injuries mentioned in the complaint, one Dan Lee was the immediate foreman and the work and directions given were to put in mud-sills in the tunnel.

5. On or about the date stated in the complaint plaintiff left the hospital after conversation with R. J. Broyer, attorney for the defendants, was visited by the hospital doctor some time thereafter but was not formerly discharged from the hospital on the said date otherwise.

6. Plaintiff does not know the names of the bones and that part of the skeleton supporting the lower abdomen which were broken and crushed, not being an anatomist, and the defendants' physicians and surgeons have refused to allow him to have an X-ray photograph of the said broken bones so that plaintiff might obtain from authoritative sources the information on this point called for in defendants' motion.

[9]

7. The defendants failed and neglected to suitably timber the said tunnel so as to protect the workmen, by using old and weakened timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon.

DANIEL S. REEDER,

Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 28, 1912. Ed. M. Lakin, Clerk. [10]

**[Order Allowing Plaintiff to Amend Complaint by  
Interlineation, etc.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

Special May, 1912, Term—May 25th—6th Court Day.

C.—42.

**MINUTE ORDER.**

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY AND COPPER RIVER &  
NORTHWESTERN RY. CO.,

Defendants.

Now, on this day, this matter coming on to be heard upon the motion of the defendant to make more definite and certain, R. J. Boryer, Esq., appearing for the defendant; J. H. Cobb, Esq., appearing for the plaintiff, and after arguments had and the Court being fully advised in the premises,—

IT IS ORDERED that the plaintiff be allowed to amend his complaint, as filed herein, by interlineation, and is ordered to file a Bill of Particulars, and the defendant is given ten days from the date of filing said Bill of Particulars in which to further plead.

Entered Court Journal No. C. 1, page No. 278.

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

THE KATALLA COMPANY and COPPER  
RIVER & NORTHWESTERN RAILWAY  
COMPANY,

Defendants.

**Answer [of Copper River & N. W. Ry. Co.].**

Comes now the Copper River & Northwestern Railway Company, answering separately the above-entitled complaint in said action, says:

I.

Admits that the Copper River & Northwestern Railway Company is and was at the time mentioned in the complaint a corporation doing business in the District of Alaska, and admits that the Copper River & Northwestern Railway Company was doing business as a common carrier in the District of Alaska at the time or times mentioned in the complaint.

II.

Answering paragraph 2 of the complaint, the Copper River & Northwestern Railway Company admits that the plaintiff was not on the 7th day of August, A. D. 1911, or at any time prior thereto, in the employ of the Copper River & Northwestern Railway Company as a carpenter or in any other

capacity, and denies that said plaintiff was working for the Copper River & Northwestern Railway Company in a tunnel or about a tunnel located at Mile 131 at any times mentioned in the complaint.

III.

Answering paragraph 3 of the complaint, the Copper River & Northwestern Railway Company denies each and all of the allegations contained therein. [12]

IV.

Defendant, The Copper River & Northwestern Railway Company, denies each and all of the allegations contained therein.

V.

Defendant, The Copper River & Northwestern Railway Company, answering paragraph 5 of the complaint, denies each and all of the allegations contained therein.

AFFIRMATIVE DEFENSE.

The Copper River & Northwestern Railway Company, defendant herein, for first, separate and affirmative defense, alleges:

I.

That if the plaintiff received an injury on the 7th day of August, A. D. 1911, said injury or injuries were caused by and arose out of and from risks incident to his employment and business in which said plaintiff engaged and which risks the plaintiff assumed.

Defendant, the Copper River & Northwestern Railway Company, for second, separate and affirmative defense, alleges:

I.

That if plaintiff was injured on about the 7th day of August, A. D. 1911, said injuries were caused by the negligence or contributory negligence of the plaintiff and of or by the negligence of a fellow-servant.

Wherefore, defendant, The Copper River & Northwestern Railway Company, requests that this case be dismissed with costs to plaintiff.

R. J. BORYER,  
Attorney for Defendant, Copper River & Northwestern Ry. Co.

United States of America,  
District of Alaska,—ss.

George Geiger, being first duly sworn, upon his oath [13] deposes and says: That he is Superintendent of the Copper River and Northwestern Railway Company and attorney in fact for the transaction of all business for the Katalla Company, at Cordova, Alaska; that he had read the answer in this action, knows the contents thereof and that the same are true.

GEORGE GEIGER.

Subscribed and sworn to before me this 7th day of June, A. D. 1912.

[Seal] R. J. BOYER,  
Notary Public in and for the District of Alaska,  
Residing at Cordova.

This is to certify that the above is a true and correct copy of the original answer in this case.

R. J. BORYER,  
Attorney.



[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 8, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [14]

---

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

THE KATALLA COMPANY and COPPER  
RIVER & NORTHWESTERN RAILWAY  
COMPANY,

Defendants.

**Answer [of Katalla Co.].**

Comes now Katalla Company and answering separately the above-entitled action, says:

I.

Admits that the Katalla Company is and was, at the time mentioned in the complaint, a corporation doing business in the District of Alaska, but denies that the Katalla Company was doing business as a common carrier in the District of Alaska, and denies that the Katalla Company was engaged as a common carrier at any of the time or all of the time mentioned in the complaint.

II.

Answering paragraph 2 of the complaint, the Katalla Company admits that the plaintiff was on the 7th day of August, A. D. 1911, and for some time prior thereto, in the employ of the Katalla Company

as a carpenter, and was on the 7th day of August, A. D. 1911, working as a carpenter at or near Mile 131 in a tunnel located at Mile 131.

III.

Answering paragraph 3 the Katalla Company denies each and all of the allegations contained therein.

IV.

Defendant, Katalla Company, answering paragraph 4 of the complaint, denies each and all of the allegations contained therein. [15]

V.

Defendant, Katalla Company, answering paragraph 5 of the complaint, denies each and all of the allegations contained therein.

AFFIRMATIVE DEFENSE.

The Katalla Company, defendant, herein for first separate and affirmative defense, alleges:

That if the plaintiff received an injury on the 7th day of August, A. D. 1911, said injury or injuries were caused by and arose out of and from risks incident to his employment and business in which said plaintiff was engaged and which risks the plaintiff assumed.

Defendant, The Katalla Company, for second separate and affirmative defense, alleges:

I.

That if plaintiff was injured on or about the 7th day of August, A. D. 1911, said injuries were caused by the negligence or contributory negligence of the plaintiff and of or by the negligence of a fellow-servant.

WHEREFORE, defendant, the Katalla Company,



requests that this case be dismissed, with costs to plaintiff.

R. J. BORYER,

Attorney for Defendant, The Katalla Company.

United States of America,

District of Alaska,—ss.

George Geiger, being first duly sworn, upon his oath deposes and says:

That he is Superintendent of the Copper River & Northwestern Railway Company and attorney in fact for the transaction of all business for the Katalla Company, at Cordova, Alaska; that he had read the answer in this action, knows the contents thereof and that the same are true.

GEORGE GEIGER. [16]

Subscribed and sworn to before me this 7th day of June, A. D. 1912.

[Seal]

R. J. BORYER,

Notary Public in and for the District of Alaska,  
Residing at Cordova.

This is to certify that the above is a true and correct copy of the original answer in this case.

R. J. BORYER,

Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 8, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [17]

*In the District Court for Alaska, Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY, a Corporation, et al.,

Defendants.

**Reply to Affirmative Answers of Both Defendants.**

Now comes the plaintiff, by his attorney, and for Reply to the separate affirmative answers of the defendants (both said answers being identical as to facts alleged) says:

I.

Referring to first affirmative answer, plaintiff denies all and singular the allegations therein contained.

II.

Referring to the second affirmative answer of defendants, plaintiff denies all and singular the allegations therein contained.

J. H. COBB,

Attorney for Plaintiff.

United States of America,

District of Alaska,—ss.

Daniel S. Reeder, being first duly sworn, on oath deposes and says: I am the plaintiff above named. I have read the above and foregoing Reply, know the contents thereof, and the same is true as I verily believe.

DANIEL S. REEDER.

Subscribed and sworn to before me this 24th day of August, 1912.

[Seal]

J. H. COBB,

Notary Public in and for Alaska. [18]

Service admitted this 20th day of November, 1912.

R. J. BORYER,

Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 22, 1913. Ed. M. Lakin, Clerk. [19]

---

[Minutes of Trial.]

*In the District Court for the Territory of Alaska,  
Third Division.*

Special April, 1913, Term—April 24th—13th Court  
Day—Thursday.

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RY. CO.,

Defendants.

Now, on this day, the trial of the above-entitled cause came on regularly for trial; J. H. Cobb appearing as attorney for plaintiff; R. J. Boryer appearing as attorney for defendants, and both parties announcing their readiness for trial, the following per-

sons were selected and sworn to try the issues in this cause:

- |                     |                       |
|---------------------|-----------------------|
| 1. Z. L. King,      | 7. E. F. Bell,        |
| 2. W. M. Trout,     | 8. E. E. Chamberlain, |
| 3. Jos. Lee,        | 9. A. S. Jensen,      |
| 4. Jas. A. Clinton, | 10. Jos. Bourke,      |
| 5. S. E. Hood,      | 11. L. C. Townsend,   |
| 6. L. H. Pederson,  | 12. T. P. Murphy.     |

Whereupon Elmer Wood was sworn and testified as witness on behalf of the plaintiff.

Whereupon Daniel S. Reeder was sworn and testified as a witness in his own behalf.

Whereupon Jas. McGill, Carl Johnson were sworn and testified as witnesses on behalf of the plaintiff.

Whereupon Plaintiff's Exhibits "A" and "B" were offered and admitted in evidence.

Whereupon Chris. Likeits and John Reidy were sworn and testified as witnesses on behalf of the plaintiff. [20]

Whereupon Plaintiff's Exhibits "C" and "D" were offered and admitted in evidence.

Whereupon A. M. Kinney was sworn and testified as witness on behalf of the plaintiff.

Whereupon Plaintiff's Exhibits "E" and "F" were offered and admitted in evidence.

Whereupon Daniel S. Reeder was sworn and testified further in his own behalf.

Whereupon, it being the hour of adjournment, the further trial of this cause is continued until to-morrow at the hour of ten o'clock A. M.

Entered Court Journal No. C.—2, page No. 53.

*In the District Court for the Territory of Alaska,  
Third Division.*

Friday, April 25th, 1913—14th Court Day. Special  
April, 1913, Term.

Entered Court Journal No. C.—2, Page No. 54.

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RY. CO.,

Defendants.

**Trial Continued.**

Now, on this day, the trial of the above-entitled cause came on again regularly for trial; J. H. Cobb appearing as attorney for the plaintiff; R. J. Boryer appearing as attorney for defendants; came the jury, heretofore impaneled and sworn herein, and being called and each answering to his name, the following proceedings were had and done, to wit:

Whereupon Daniel S. Reeder resumes the stand and testifies further in his own behalf.

Whereupon Defendants' Exhibits 1, 2, 3, 4, 5, and 6 were offered and admitted in evidence.

Whereupon Mrs. Daniel S. Reeder was sworn and testified as a witness on behalf of the plaintiff.

Whereupon W. H. Chase and H. C. Feldman were sworn and testified as witnesses on behalf of the plaintiff.

Whereupon Plaintiff's Exhibits "G" and "H" were offered and admitted in evidence.

Whereupon plaintiff rests.

Thereupon counsel for defendants files his written motion for Judgment of nonsuit as to both defendants herein and after arguments had and the Court being fully advised in the premises, denies said motions to which order and ruling of the [22] Court defendant excepts and exception is duly allowed.

Whereupon Karl Lekeits was recalled and testified as a witness on behalf of the defendants.

Whereupon J. W. Forrester and F. H. Estabrook were sworn and testified as witnesses on behalf of the defendants.

Whereupon defendants rest.

Thereupon counsel for defendants files his written motions for a directed verdict on behalf of both parties, which said motions were by the Court denied.

Whereupon, it being the hour of adjournment, the further trial of this cause is continued until to-morrow at the hour of ten o'clock A. M. [23]

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*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RY. CO.,

Defendants.



**Motion [of Katalla Co.] for Nonsuit.**

Comes now the defendant, the Katalla Company, by its attorney, R. J. Boryer, and moves the Court to grant a nonsuit to this defendant for the reasons:

I.

That the plaintiff has closed his case and has failed to establish that the Katalla Company was a common carrier at the time that the plaintiff was injured, and failed to establish that the Katalla Company was doing a common carrier business over the line and at the place where the plaintiff was injured.

II.

That this action is brought under the Federal Employers' Liability Acts of 1906, 1908 and 1910, which is in derogation of the common law, and having failed to establish that the Katalla Company was doing a common carrier business at the time of the injury to plaintiff and over the line at the point where the plaintiff was injured, cannot recover at common law in this action.

III.

For the further reason that the evidence in the case introduced by the plaintiff conclusively shows that the plaintiff was employed in retimbering and strengthening of the tunnel upon which he was working for the purpose of making said [24] tunnel safe, and that he was injured by reason of one of the hazards incident to his work which he knew while working on said tunnel.

IV.

For the further reason that the evidence shows

that the plaintiff was a co-laborer and a fellow-servant of the laborer who knocked the brace off of the frame-work of the tunnel and that the knocking off of the brace in said tunnel was the cause of the cave-in which injured the plaintiff.

V.

For the further reason that the plaintiff has failed to establish his case.

R. J. BORYER,

Attorney for Defendant, Katalla Company.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 25, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [25]

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*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER  
& NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Motion [of Copper River & N. W. Ry. Co.] for  
Nonsuit.**

Comes now the defendant, the Copper River & Northwestern Railway Company, by its attorney, R. J. Boryer, and moves the Court to grant a nonsuit to this defendant for the reasons:



I.

That the plaintiff has closed his case and has failed to show that the plaintiff was employed by the Copper River & Northwestern Railway Company, and has failed to show that the plaintiff was in the employ of the Copper River & Northwestern Railway Company at the time that he received his injury complained of in this action.

II.

For the further reason that the plaintiff has failed to show that the defendant, Copper River & Northwestern Railway Company, was doing a common carrier business at the time the plaintiff was injured as alleged in his complaint, and for the further reason that the plaintiff has failed to show that the Copper River & Northwestern Railway Company was doing a common carrier business over the line and at the place where the plaintiff received his injury, and for the further reason that this action is based upon the Federal Employers' Liability Act as passed by Congress of United States in 1906, 1908 and 1910, which act precludes a recovering at common law.

[26]

III.

For the further reason that the evidence shows that the plaintiff was employed at and was engaged in retimbering, strengthening and making an unsafe tunnel safe, which facts were admitted by the plaintiff to be known by him prior to the happening of his injury and was injured by reason by one of the risks incident to his work.

IV.

For the further reason that the plaintiff has failed to show that this defendant failed and neglected to suitably timber the said tunnel so as to protect the workmen, by using old and weaken timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon.

V.

For the further reason that the plaintiff has failed to establish his case against this defendant.

VI.

For the further reason that the plaintiff has admitted that he was familiar with and knew all of the dangers incident to his work and by which he was injured.

R. J. BORYER,

Attorney for Defendant, Copper River & Northwestern Railway Company.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 25, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [27]

*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER  
& NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Motion [of Copper River & N. W. Ry. Co.] for  
Directed Verdict.**

Comes now the Copper River & Northwestern Rail-  
way Company, by its attorney, R. J. Boryer, and  
moves the Court for a Directed Verdict in this action,  
for the reasons:

I.

That the plaintiff has closed his case and has failed  
to show that the plaintiff was employed by the Cop-  
per River & Northwestern Railway Company, and  
has failed to show that the plaintiff was in the employ  
of the Copper River & Northwestern Railway Com-  
pany at the time that he received his injury com-  
plained of in this action.

II.

For the further reason that the plaintiff has failed  
to show that the defendant, Copper River & North-  
western Railway Company, was doing a common car-  
rier business at the time the plaintiff was injured as  
alleged in his complaint, and for the further reason

that the plaintiff has failed to show that the Copper River & Northwestern Railway Company was doing a common carrier business over the line and at the place where the plaintiff received his injury, and for the further reason that this action is based upon the Federal Employers' Liability Acts as passed by Congress of the United States in 1906, 1908 and 1910, which Acts preclude a recovering at common law.  
[28]

### III.

For the further reason that the evidence shows that the plaintiff was employed at and was engaged in re-timbering, strengthening and making an unsafe tunnel safe, which facts were admitted by the plaintiff to be known by him prior to the happening of his injury, and was injured by reason by one of the risks incident to his work.

### IV.

For the further reason that the plaintiff has failed to show that this defendant failed and neglected to suitably timber the said tunnel so as to protect the workmen, by using old and *weaken* timber and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon.

### V.

For the further reason that the plaintiff has failed to establish his case against this defendant.

R. J. BORYER,  
Attorney for Defendant, Copper River & Northwest-  
ern Railway Company.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 25, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [29]

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*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER  
& NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Motion [of Katalla Co.] for Directed Verdict.**

Comes now the Katalla Company, by its attorney, R. J. Boryer, and moves the Court for a Directed Verdict in this action for the reasons:

I.

That the plaintiff has closed his case and has failed to establish that the Katalla Company was a common carrier at the time that the plaintiff was injured, and failed to establish that the Katalla Company was doing a common carrier business over the line and at the place where the plaintiff was injured.

II.

That this action is brought under the Federal Employers' Liability Acts of 1906, 1908 and 1910, which is in derogation of the common law, and having failed to establish that the Katalla Company was a common

*carrier business* at the time of the injury to plaintiff and over the line at the point at which the plaintiff was injured, cannot recover at common law in this action.

### III.

For the further reason that the evidence in the case introduced by the plaintiff conclusively shows that the plaintiff was employed in retimbering and strengthening the tunnel upon which he was working for the purpose of [30] making said tunnel safe and that he was injured by reason of one of the hazards incident to his work which he knew while working on said tunnel.

### IV.

For the further reason that the evidence shows that the plaintiff was a co-laborer with and a fellow-servant of the laborer who knocked the brace off of the frame-work of the tunnel, and that the knocking off of the brace in said tunnel was the cause of the cave-in which injured the plaintiff.

### V.

For the further reason that the plaintiff has failed to establish his case.

### VI.

For the further reason that the plaintiff has admitted that he was familiar with and knew all of the dangers incident to his work and by which he was injured.

R. J. BORYER,

Attorney for Defendant, Katalla Company.



[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 25, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [31]

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**[Minutes of Trial—Continued.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

Special April, 1913, Term—April 26th—15th Court  
Day.

Entered Court Journal No. C.—2, Page No. 56.  
C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

THE KATALLA COMPANY and THE COPPER  
RIVER & NORTHWESTERN RAILWAY  
COMPANY,

Defendants.

Now, on this day, the trial of the above-entitled cause came on again regularly for trial; J. H. Cobb appearing for the plaintiff; R. J. Boryer appearing for defendants. Came the jury, heretofore impaneled and sworn herein and being called and each answering to his name, the following proceedings were had and done, to wit:

WHEREUPON arguments were made by counsel for plaintiff and counsel for defendant, the jury was duly instructed as to the law in the premises and retire in charge of their sworn bailiffs for deliberation upon their verdict herein, and thereafter return-



ing into court, present by and thru their foreman, in their presence in open court, their verdict, which is in words and figures as follows, to wit: [32]

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY, a Corporation, and  
COPPER RIVER & NORTHWESTERN  
RAILWAY CO., a Corporation,

Defendants.

**Verdict.**

We the jury, duly selected, impaneled, sworn and charged in the above-entitled action, do find for the plaintiff and against the defendants, and each of them, and assess plaintiff's damages at \$5,000.00.

Dated at Cordova, Alaska, this 26th day of April, 1913.

JOSEPH A. BOURKE,

Foreman.

WHEREUPON said verdict is ordered filed and entered by the clerk and the jury are excused from further deliberation herein. [33]

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska,  
Third Division. Jul. 29, 1913. Arthur Lang, Clerk.  
By V. A. Paine, Deputy. [34]

**[Transcript of Testimony, etc.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

BE IT REMEMBERED, that the above-entitled  
cause came on duly and regularly to be heard at Cor-  
dova, Alaska, in said Third Judicial Division, on  
Thursday, the 24th day of April, 1913, at 10 o'clock  
A. M., before the Honorable PETER D. OVER-  
FIELD, Judge of said Court, and a Jury:

The plaintiff herein being represented by his  
attorney and counsel, JOHN H. COBB, ESQ.,

The defendants herein being represented by their  
attorney and counsel, R. J. BORYER, ESQ.

The Jury having been empanelled, opening state-  
ments were made by the respective attorneys in be-  
half of the plaintiff and defendants herein:

WHEREUPON the following additional proceed-  
ings were had and done, to wit: [35]

Before empanelling of the Jury—

By Mr. BORYER.—At this time I desire to take

an exception to the excusing of the jurors that were called upon the special venire.

By the COURT.—The exception will be allowed.

[**Examination of Jurors.**]

**Examination of Juror Soule.**

(By Mr. BORYER.)

Q. You reside in Valdez? A. Yes.

Q. Have you heard anything of the facts in this case? A. No, sir.

Q. Are you acquainted with Mr. Reeder?

A. No.

Q. Have you any prejudice for or against corporations? A. Not in the least.

Q. Have you any prejudice against either of the defendant corporations, the Katalla Company or the Copper River & Northwestern Railway Co.?

A. No, sir.

Q. If you are selected as a juror in this case will you be guided exclusively by the evidence and the instructions of the court in arriving at your verdict?

A. Yes, sir.

Mr. BORYER.—We pass the juror for cause.

(By Mr. COBB.)

Q. What is your occupation?

A. I am a civil engineer.

Q. You say you have no prejudice against the defendants—have you any bias in their favor?

[37\*—2†] A. No, sir.

Q. Have you been endeavoring to get employment

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\*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

from them lately?

A. Never asked for a job from them in my life.

Q. Have you been endeavoring to get employment from any of the allied corporations? A. No, sir.

Q. Are you acquainted with Mr. Boryer?

A. I have met him since I have been in Cordova, coming to Cordova.

Q. Have you been to his office since you have been down here?

A. I think probably once I have been in his office; that was probably a year and a half ago.

Q. Since you have been down here this time?

A. Not this time, no.

Mr. COBB.—Pass for cause. Later—

Mr. COBB.—I would like to ask Mr. Soule another question.

By the COURT.—Very well.

Q. Did you serve upon a regular panel or grand jury within the last year?

A. Yes, I served on the regular panel in Cordova last fall.

Mr. COBB.—We submit a challenge for cause.

By the COURT.—Mr. Soule will be excused.

Mr. BORYER.—We desire an exception to the ruling.

Exception allowed.

### **Examination of Juror McNiece.**

(By Mr. BORYER.)

Q. You reside in Valdez? A. Yes.

Q. How long have you resided in Valdez?

[38—3] A. About three years and a half.

Q. Have you served as a juror within the past

year in this division, in this court, as a juror or grand juror? A. Just on a special venire, one case.

Q. Where was that? A. Valdez.

Q. At what term of court?

A. The last term of court at Valdez.

Q. What month was that?

A. That was about two months ago.

Q. Not over two months ago?

A. No, not over two months ago.

Mr. BORYER.—We challenge the juror for cause.

(By the COURT.)

Q. You were just called to serve on one case?

A. Yes, a special venire, on one case.

Q. And you were excused immediately after the one case? A. Yes, sir.

By the COURT.—The challenge will be denied.

Defendant allowed an exception to the ruling.

**[Proceedings Had—After Impanelment of Jury.]**

The empanelling of the Jury having been completed—

By the COURT.—Before the jury is sworn I am going to ask you two questions: assuming, not that you have not answered them correctly, but that you may not have been asked the exact questions, at least in a pointed way and in my desire to have a jury that are absolutely qualified, I want to know, first, whether any one of you feel that you are so constituted mentally or by reason of experiences you have [39—4] had in life that you feel that when a man is injured you have a more than natural sympathy for that man, so that you feel it would be very difficult for you to follow the instructions of the

Court in this case, which will be that you must not allow sympathy to actuate you in the least in reaching your verdict. In answering that question I want each of you to feel just as free and not hesitate in the least in saying so to me—Does any one of you feel that you are in such a position with reference to this case, if you do I wish you would indicate it to me freely and frankly—Does anyone feel that way? If you do, just raise your hand so I may know. (After a pause:) I see no hand raised. The next question I am going to ask you is this: In view of the fact that there are rival towns here in Alaska to a certain extent—I don't say they are rivals, but in the matter I am going to ask you about it is possible, that is in reference to railroads—referring, now, to the towns of Cordova, Valdez and Seward—I assume that there are jurors from all three towns—Would the fact that some of you are from a town other than Cordova lead you to have a prejudice against the defendants in this case, the companies, so that you feel that that fact alone may influence you—that you may be influenced to render a verdict against them by the mere fact alone that you live in Seward or live in Valdez—I want you to be just as free in answering that question under your oaths as the other question—If any man feels that way, that there is a possibility of it, raise your hand. (After a pause) I see none.

Mr. HUNT.—I would like to ask along those lines whether having served on the last grand jury the same time that Mr. [40—5] Swan did has any weight.



By the COURT.—Yes.

Mr. HUNT.—Then I will say that I was on the same panel.

By the COURT.—Were you regularly—

A. At this session, special, to fill the grand jury.

By the COURT.—I have to be consistent in my ruling—I will allow you to be excused.

Mr. BROWN.—I am in the same position; I served as a special.

Mr. BROWN excused.

Mr. COBB.—They don't claim it as an exemption.

By the COURT.—I am not sure about it. I can't tell from the code and I haven't the Revised Statutes.

Mr. COBB.—The code hasn't anything to do with it—it is governed by the Revised Statutes.

By the COURT.—My opinion is that a rule of this kind is to prevent professional jurors and I have to keep that in mind in my rulings.

Mr. COBB.—That is the reason why special veniremen are not excluded.

The jury being completed—

By the COURT.—Now, if there are any other reasons why any juror feels he should not serve on the jury you may make it known. (No answer.)

By the COURT.—The jury may be sworn.

Mr. Cobb makes his opening statement; followed by Mr. Boryer.

By the COURT.—Call your first witness.

Mr. COBB.—I will call Mr. Wood. [41—6]



[**Testimony—Plaintiff's Case.**]

[**Testimony of E. F. Woods, for Plaintiff.**]

E. F. WOOD, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. Cobb.)

Q. What is your name?     A. E. F. Wood.

Q. Where do you reside?    A. Cordova.

Q. How long have you resided here?

A. Four years, off and on.

Q. What is your occupation?

A. Bridge-man and pile-driver.

Q. Have you ever worked for the defendant companies?     A. I have.

Q. Where were you employed last August, a year ago—August, 1911?     A. At Chitina.

Q. What were you doing?

A. Well, repairing up some old work, some old bents, on this end of the tunnel, on the Chitina end.

Q. Near Mile 131?     A. Yes, sir.

Q. What road was that on?

Mr. BORYER.—We object to that, unless the witness knows.

By the COURT.—He ought to know; I don't know whether he does or not.

Q. Do you know what road you were at work on?

A. It was supposed to be the Copper River & Northwestern.

Q. What is known as the Copper River & Northwestern Railway line?     A. Yes, sir.

(Testimony of E. F. Wood.)

Q. This is the road leading from Cordova out along the Copper [42—7] River to the interior of Alaska? A. Yes, sir.

Q. Do you remember an accident caused by a cave-in there, about the 7th? A. I do.

Q. At the particular time the accident happened, where were you?

A. I was at this end of the tunnel, as I stated before, tearing off the old work.

By the COURT.—Did the accident happen at this end of the tunnel? A. No, sir.

By the COURT.—The other end? A. Yes, sir.

Q. About how long is that tunnel?

A. Three hundred feet or a little better, I should judge—I never measured it.

Q. What time in the morning was it?

A. Somewhere around half-past 7 or 8 o'clock, as near as I can tell.

Q. Are you acquainted with the plaintiff, Dan Reeder? A. I am.

Q. How long have you known him?

A. Well, I have seen him off and on for four years.

Q. Did you see him that morning? A. I did.

Q. Where was he when you first saw him?

A. He was going into the tunnel to work—he passed just as we were working.

Q. Passed you on the way to his work?

A. Yes, sir.

Q. How long was this before the alarm of the accident was given? [43—8]

A. Not very long,—I couldn't say just how long

(Testimony of E. F. Wood.)

it was, but I know it could not have been very long before that, before we were given the alarm.

Q. Give the jury some idea of the length of time, the best you can—whether it was ten minutes or 15 minutes or 20 minutes or an hour.

A. Well, Dan just passed me—I remember hearing it spoken of next day—Dan just passed us when these other two fellows came right back and gave the alarm.

Q. It had not been but a few minutes?

A. It was not very long. I couldn't say just how long it was.

Q. How far from where you were was it, when he passed you, to the place where he was at work, about?

A. I should say about 300 ft., as I said before.

Q. When you heard the alarm, what did you do?

A. We went into the tunnel and helped him out.

Q. Tell the jury what you found, and what you did.

By the COURT.—Describe it to the jury so the jury can see what you saw.

A. The men were buried underneath the timbers and gravel and dirt, and we started in to dig them out.

By the COURT.—Stop and see how much you think the jury know of what you saw there from that statement. Put yourself in the place of the jury and try to make them see the position the plaintiff was in and as far as possible draw a picture of what you saw there, in your own mind.

The WITNESS.—The timbers were all broke down, and the dirt was on top of them, and the men were underneath there and they were calling on us

(Testimony of E. F. Wood.)

to get them out; the men were alive,—they knew us.

Q. Go ahead—tell what you did, and what you found as you dug [44—9] down there?

A. Well, we dug down, and we got them out. I only seen two taken out, because I got hurt myself then, and had to leave the tunnel before they were all taken out.

Q. Who was it you saw taken out?

A. I saw Mr. O'Neil, and I saw—he was the only one I knew.

Q. What condition was he in?

Mr. BORYER.—We object to that.

Objection sustained.

Q. How many men were killed underneath that cave-in there?

Mr. BORYER.—We object to that as irrelevant and immaterial.

Objection sustained.

Q. How long were you there before you got hurt?

A. I was probably there three hours or more.

Q. Did you see Mr. Reeder when he was taken out?

A. No, sir; I left the tunnel before he was taken out.

Q. You left before they got him out?      A. Yes.

Q. Now, I want you to tell the jury the best you can what condition Mr. Reeder was in when you got there, and during the time you were there working to get him out—what he was undergoing, if he seemed to be undergoing anything. Try to give the picture that is in your mind of Mr. Reeder when he was

(Testimony of E. F. Wood.)

underneath there, and how he was buried, and all about it.

Mr. BORYER.—We object to the question, unless it is shown that he knows what the plaintiff was undergoing.

By the COURT.—He may answer the question.

Defendant allowed an exception.

A. He was buried under the timbers and I heard him talking, but I couldn't see him. He must have been suffering, because I [45—10] heard him call on the boys to stop them sawing, and come *and come* and get him.

Mr. BORYER.—We move to strike the answer as a conclusion and not responsive to the question.

Motion denied. Defendant allowed an exception.

Q. Go ahead and tell all you remember about it.

A. That is about all I remember. I heard him call on the boys just before I left, telling them to stop them sawing the timber that was across him. His boys were working on the other side of the tunnel, and there were men there working over Dan that were not experienced men, and he called on the boys to come over and make them stop,—I remember that.

Q. During all this time that you were there, about three hours, he was in the place where he was caught when the roof fell? A. Yes.

Q. About what time in the day was it when you got hurt and was taken away?

A. I couldn't just say,—along toward noon.

Q. You think you had been there about three hours? A. Yes, sir; something like that.

(Testimony of E. F. Wood.)

Mr. COBB.—That will be all.

Cross-examination.

(By Mr. BORYER.)

Q. You say you have known Reeder about four years?

A. Well, I have seen him—I haven't known him that long.

Q. Where did you first become acquainted with Reeder?

A. I have seen him along the road,—I think it was on the Chitina bridge, if I am not mistaken, working on the Chitina bridge.

Q. Working on the Chitina bridge?

A. Yes, sir. [46—11]

Q. That is along the line of the railroad?

A. Yes, sir.

Q. And it is part of the railroad?      A. Yes.

Q. What work was he doing on the Chitina bridge, do you know?

A. He was there as a carpenter, a bridge carpenter, I believe.

Q. Working on the bridge as a bridge carpenter?

A. Yes, sir.

Q. Did you see him working anywhere else?

A. Yes, I have seen him working,—he was working there at the tunnel.

Q. Working at the tunnel?      A. Yes, sir.

Q. The particular tunnel in question in this case?

A. Yes, sir.

Q. When did you first see Reeder working on that tunnel?



(Testimony of E. F. Wood.)

A. That day—I don't remember seeing him in there or working there before. I couldn't say.

Q. Had you worked around that tunnel any length of time? A. No, sir.

Q. That was your first day?

A. That was my first day.

Q. Then you don't know whether he work on that tunnel prior to that time or not? A. No, sir.

Q. What were you doing at that tunnel?

A. We had the pile-driver in there, the track-driver rather—we were tearing out some old work that was on this end of the tunnel.

Q. Tearing out some old work? [47—12]

A. Yes, sir; temporary work.

Q. For what purpose?

Mr. COBB.—We object to that; this was three hundred feet away from where this accident happened.

Objection sustained. Defendant allowed an exception.

Q. You saw Reeder that morning? A. Yes, sir.

Q. Going to work? A. Going to work.

Q. Do you know what work he was going to do?

A. No, sir.

Q. Do you know where he went?

A. He went into the tunnel.

Q. He went into the tunnel? A. Yes.

Q. Do you know what work he was doing in the tunnel? A. Not at the time; no.

Q. Do you know what work he had been doing in the tunnel? A. Carpenter.



(Testimony of E. F. Wood.)

Q. You said that you were working on the Copper River & Northwestern Railroad. Did I understand that correctly? A. Yes, sir.

Q. By that you mean the railroad running from Cordova to Chitina and beyond to the Kennecott Mines? A. Yes, sir.

Q. You didn't mean to say that you knew who owned that railroad, did you?

A. No, sir; I did not.

Q. And you don't want the jury to so understand you? [48—13] A. No.

Mr. COBB.—Do you deny that it belongs to the Copper River & Northwestern Railroad Company?

Mr. BORYER.—I expect you to make out your case.

Q. Then, as a matter of fact, the only thing you know in regard to Reeder's accident was the fact that he was in the tunnel at the time that the accident happened? A. Yes, certainly, he was in the tunnel.

Q. You were not present when the accident happened, were you?

A. I was at this end of the tunnel when the accident happened.

Q. You couldn't see it from where you were located? A. No, sir; I couldn't see it.

Q. How long have you known Reeder as a carpenter? A. Ever since I know him.

Q. About four years?

A. Yes, I suppose he was a carpenter.

Witness excused. [49—14]

[**Testimony of Daniel S. Reeder, in His Own Behalf.**]

DANIEL S. REEDER, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name?

A. My name is Daniel S. Reeder.

Q. Where do you live?

A. I have resided in Cordova for the last—about, a little over five years now.

Q. What is your trade or occupation?

A. I generally follow steamboating; I follow carpentering when I am not steamboating.

Q. And what was your occupation in this country?

A. I was steamboating the greater portion of the time on the river steamboats for the company—I was made a pilot on one boat—

Q. Were you ever a carpenter?      A. Yes, sir.

Q. When?

A. I went to work the fall of 1910. Worked a while in the fall of the year after the boat tied up and didn't do anything more until the following spring. The spring of 1911 I went to work in Chitina, in the Chitina tunnel, as carpenter, working there as carpenter.

Q. What month did you begin to work in 1911?

A. I think it was somewhere about the middle of April we started in.

Q. Who were you working for?

A. Well, I was working for the Railroad Co.—I

(Testimony of Daniel S. Reeder.)

don't know—that is about all I know. I was working for the Railroad Co.

Q. The Copper River & Northwestern Railway?  
[50—15]

A. I don't know which I was working for. I think at that time I was working for the Katalla Company, the way I understood it, at that time.

Q. What made you think that?

A. Along about the middle of May the timekeeper came along and says, "We are going to change your work tags; we are going to take up all the old Katalla Co. tags and give you the new Copper River & Northwestern," and I know he changed them and I got my tag and had it up to about a month ago and lost it.

Q. I wish you would explain to the jury the difference between those tags, the Katalla Company tags and the Copper River & Northwestern tags.

A. Each and every corporation had their own brass tags,—the Heney Company had two or three or half a dozen kinds of them. The Katalla Company had a brass tag and each and every man went by his number as well as his name, because there were so many Johnsons and Petersons and Olsens and names like that that they gave them a number along the road. They changed these working tags; the Copper River & Northwestern issued their tags and they took up the Katalla Co.'s tags and gave us the new Copper River & Northwestern, and I think it was about the middle of April—I know it was when Baker was timekeeper.

Q. From that time on, you understood that you

(Testimony of Daniel S. Reeder.)

were working for the Copper River & Northwestern Railway Co.?

A. Yes, that was the understanding.

Q. What was on those tags besides the number, each one of them?

A. Well, the Katalla Company's tags had a letter K on it and then the number and the new tag had the letter C on it and [51—16] the number, and a different shaped tag.

Q. Were you tagged with a Copper River & Northwestern Railway Co. tag at the time of this accident?

A. Yes, sir.

Q. Now, coming down to the month of August, 1911, do you recall what day of the month this accident happened?

A. Yes, it happened on the 7th.

Q. Where had you been at work a few days prior to that?

A. Up to some time in July I had been up on the Kuskolina bridge, helping them finish the deck on the bridge, the Kuskolina Bridge; and I think it was some time in July we finished up there and was laid off for a week or so. I don't remember just how long. We went to work about the 16th or 18th of July, if I remember, at the Chitina tunnel, and I worked on until the accident happened—around the tunnel and over around the depot, different depots around there.

Q. Where had you been at work the days immediately preceding this accident,—what had you been doing?

(Testimony of Daniel S. Reeder.)

A. Well, I had been working in the timber gang that was setting up, reinforcing the old timbers, and we worked up to within four bents of the breast, that was as far as we could go,—the mudsills in there in this tunnel, and we had to lay off then until the excavating gang could excavate out ahead so as to get the mudsills in and the gang that was doing the timbering, the gang there under Dan Lee was sent over to finish doing a lot of work around the depot and some of them was working in the depot, that is, the passenger depot. I was helping lower the freight depot—the freight depot was a foot too high, and I think either a foot or two feet too close to the track, and we were cutting it [52—17] off. Mr. Hawkins had condemned it, being so close there that there wasn't room for a man to get between it and a box-car, and he was afraid somebody might get hurt, and he ordered it cut off so that it would stand further away from the track and that we were doing up to the morning that this happened,—I think it was three or four days that we worked in there,—I don't know, I couldn't say. It might only have been two days but it seems to me that it was three or four days.

Q. Now, at the time you had been in the tunnel, the last time preceding this accident, was there anything to indicate it was a particularly dangerous place to you men?

A. Not up to the time I left it, because we watched it then and it was considered at that time perfectly safe.

Q. Did you get any orders on this particular morn-



(Testimony of Daniel S. Reeder.)

ing to go to work any particular place?

A. Yes, we went over to work and Dan Lee, the foreman I was under—McFarland was really the carpenter boss, but he had Dan Lee under him—so Dan Lee was bossing over at the depot. And he says, “We will go over this morning and put those mudsills in and get ready to put those timbers in.” So somebody spoke about tools. “Well,” Dan said, “you won’t need many tools to put in mudsills; all you want is a spike mall to lay that,” and some of the boys spoke up and said, “I have got my tools, my tool-chest, over at that end of the tunnel”—we were over at this time at the Chitina end of the tunnel before we had gone over the hill, and I said, “All right, I won’t take any tools with me,”—my tools were all over at the depot, and we goes over and I stopped out at the end of the tunnel,—it was beyond the tunnel some distance, where we [53—18] had the timbers unloaded, and put on a pair of gum boots—I had on a pair of leather shoes—and before we went in there Dan Lee came out and said, “They haven’t got it excavated out so we can put the mudsills in, so you and Likits and Nord and Kilson,” I think that was the four, “go and dap out ahead there,” What he meant by dapping out, there is a plate running along the old timbers—right on top of the piles there is a plate runs along the wood, to cut a 12-inch dap along this plate, to let the top of the new post drop in to reinforce it, halfway between. The old posts were 12 feet apart.

Q. Can you explain it better from that drawing—

(Testimony of Daniel S. Reeder.)

what is that drawing? (Handing witness paper.)

A. This is a drawing of the decks—this is what they call the three segment set of timbers, three parts—here is the plate. There is a plate on top of each and everyone, running along the top of the posts and that plate runs right straight through, from one end to the other. We had to cut an arch through that—the new post came to the top of the plate—we had to cut a 12-inch dap and notch the block right out of that plate, halfway between the old timbers, to allow the notched piece to drop in, to go in half way between—they were four foot centres before and we were putting in halfway between.

Q. What do you mean by the posts, the uprights?

A. The uprights, yes, the upright posts. This is the lagging, this is the cap and this is the post up at the side here.

Q. The same as that is there?

A. Yes, and the plate was setting right on top of it. We went in to cut these notches in. There were four sets of old [54—19] timbers that had not been reinforced, that we didn't put timbers in between them to hold them up, and that is what we went in to cut these notches in, right in there—it was an ordinary timber, made out of native lumber.

Q. What time in the morning was it when you got there and went into the tunnel?

A. I should judge it was just a little after—we went to work at 6—I don't remember whether we went to work at 6 or 7; then it was about half-past 7, if we went to work at 7 o'clock, I should judge and



(Testimony of Daniel S. Reeder.)

possibly 8. I don't remember the time—I know I went over the hill, rode over and then I came back over to the depot and got my tools and went back in there, but just the time I couldn't say. The tunnel is about 420 feet long, if I remember right, and it is, I should judge, a third of a mile from Chitina station, about a quarter of a mile over to the further end of the tunnel.

Q. Now, at which end of the tunnel is the depot where you had worked before?

A. The depot was on the Chitina end, the opposite end from where we were working timbering the tunnel.

Q. And how far is Chitina from this place,—139 miles, is it?     A. The 139 mile post stands there.

Q. The tunnel is between here and Chitina?

A. No, it is beyond Chitina—the town is just this side of the bluff that the tunnel goes through.

Q. Then the depot was on the side of the tunnel towards the town of Cordova?     A. Yes, sir.

Q. You passed the station before you went in?

A. Yes, sir. [55—20]

Q. Which end of the tunnel was it that the cave-in in which you were hurt occurred?

A. Well, the cave-in was over near the middle of the tunnel, but we were working from the Kennecott or the further end of the tunnel from here; it was just a little, if I remember right, beyond the middle of the tunnel. I don't know exactly the distance. I think it was just a little beyond the middle where this cave-in occurred, where I got hurt.

(Testimony of Daniel S. Reeder.)

Q. When you went over the hill to get your tools and went back there, how long had you been in there before the accident?

A. I don't know. Just barely laid my tools down, —to tell the truth about it, I had my tools in my hand up to the time I laid them down and I heard somebody say, "Look out"—I saw the dirt raveling, and started to run, and if I had got down to the next link of plank I would have been out of there and wouldn't be hurt, but as the planking went down, my hand caught the next link of staging and I went down among the braces.

Whereupon, the hour of 12 having arrived, Court took a recess until 2 P. M.

#### AFTERNOON SESSION.

Mr. COBB.—I ask leave to withdraw the witness I had on the stand and call another witness.

By the COURT.—Very well.

Mr. COBB.—I will call Mr. McGill. [56—21]

#### [Testimony of James McGill, for Plaintiff.]

JAMES MCGILL, a witness called and sworn in behalf of the plaintiff, testified as follows:

#### Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. James McGill.

Q. What is your age? A. 49.

Q. What is your occupation?

A. I am a bridgeman.

Q. Where are you employed now?

A. I am employed on the dock at present.

(Testimony of James McGill.)

Q. Are you working for the defendant company?

A. Working for the Railroad Co.

Q. How long have you been residing here in Cordova and in this immediate vicinity?

A. Why, I have been here for—you mean this last time?

Q. About how long?

A. I have only been here three weeks.

Q. I am talking about this part of Alaska?

A. I have been here for twelve years.

Q. Were you here in this part of the country during the year 1911?     A. Yes, I was here in 1911.

Q. Where were you working that summer?

A. I was working for the Katalla Co.

Q. Where?

A. All the way along the line of railroad.

Q. Which line do you refer to?

A. The Copper River & Northwestern.

Q. The Copper River & Northwestern Railway?

A. Yes. [57—22]

Q. How long did you work for the Katalla Co.?

A. Well, I think I worked for the Katalla Co. all the time—I think it was Katalla Co.'s checks.

Q. Were you tagged?     A. Yes.

Q. With the K. Company check?

A. With the K. Company check.

Q. Was that check changed at any time?

A. No, sir.

Q. Not with you?     A. No, sir.

Q. Never changed?

A. It was never changed with me.

(Testimony of James McGill.)

Q. You are still working then for the Katalla Co.?

A. Not now, not this last time, not this spring.

Q. When was the change made with you?

A. Since I went to work the last three weeks.

Q. Then did you get a new tag?      A. Yes.

Q. What sort of a tag is that?

A. It was just about the same tag.

Q. Any different lettering on it?      A. No.

Q. Was it still marked K. Company?

A. I am not sure,—I didn't pay much attention to it.

Q. Is it marked C. Company?

A. I think I have the check with me here—it is K. Company.

Q. That is one of the old Katalla Co.'s checks?

A. That is the check I have now. [58—23]

Q. Where were you at work in the early part of the month of August, 1911?

A. I don't remember just where I was at that time because we were moving all the time.

Q. You can tell the jury about where you were working, give them an idea?

A. Well, around Chitina, on the branch I think.

Q. How far from Mile 131?

A. I don't know just where Mile 131 is, not exactly.

Q. You know where the tunnel out there is?

A. Yes.

Q. How far from that tunnel?

A. About half a mile.

Q. From which end of it?      A. The north end.

Q. That is the end beyond the tunnel from the town

(Testimony of James McGill.)

of Cordova? A. Yes, sir.

Q. What were you doing?

A. I was working on the bridge.

Q. The Railroad Co.'s bridge? A. Yes.

Q. Now, do you remember anything occurring on or about the 7th day of August of that year in the tunnel? A. I don't remember.

Q. Is there any particular reason why you don't want to tell the jury what you know about this case?

A. There is no reason.

Q. Do you tell the jury that you don't remember the accident in the tunnel?

A. I remember the accident in the tunnel, but I don't remember the date. [59—24]

Q. You remember the accident in the tunnel?

A. Yes, sir.

Q. It occurred early in August?

A. It occurred early in August.

Q. As a matter of fact, it occurred on the 7th. Now, where were you at the time the accident occurred on that day?

A. I was working on the approach to the tunnel.

Q. What time did you go to work on that morning? A. 7 o'clock.

Mr. BORYER.—At this time, if the counsel would designate to the witness which accident he means—I think there were two accidents,—one prior to the time that Reeder was injured.

Mr. COBB.—I am talking about the one in which Mr. Reeder was hurt and other men killed and others hurt—you remember that accident? A. Yes, sir.

(Testimony of James McGill.)

Q. At which end of the tunnel were you at work, —the one furthest from the town of Cordova?

A. No.

Q. The one this way?      A. The one this way.

Q. About the time that you went to work or shortly thereafter, did you see Mr. Reeder?      A. Yes.

Q. Where did you see him?

A. He was going through into the tunnel.

Q. What time was that?      A. About 7:45.

Q. Shortly after you began to work?

A. Yes, sir. [60—25]

Q. Is there anything particularly to fix the time on your mind?      A. No.

Q. But you just estimate it as 7:45, a short time after you went to work?      A. Yes, sir.

Q. You say he was going into the tunnel?

A. Yes, sir.

Q. He passed by you where you were at work?

A. Yes, sir.

Q. I will ask you if after that there was any alarm given of an accident?      A. Yes, there was.

Q. How long after Reeder passed you?

A. Why I should judge between 20 and 30 minutes.

Q. You didn't keep any account of the time, of course?      A. No.

Q. You just estimated that length of time?

A. Yes, sir.

Q. Just a short time?      A. Yes, sir.

Q. Tell the jury what sort of an alarm that was and what occurred.

A. Why men that were in the tunnel, they came



(Testimony of James McGill.)

over to get some tools, peavies and tools to work in the tunnel and told us that the tunnel had caved in—that is all.

Q. What did you do then?

A. We went over and helped dig them out.

Q. At that time was it necessary to go overland to get to the other portal of the tunnel?     A. Yes.

[61—26]

Q. You had to go over the hill?     A. Yes, sir.

Q. The tunnel was not completed?

A. It was completed, yes.

Mr. BORYER.—It was filled in by reason of a previous cave.

By the COURT.—But the tunnel had been completed at one time so they could go through?

Mr. BORYER.—Yes, sir.

Q. When you got over there—did you go at once?

A. Yes.

Q. As fast as you could?     A. Yes, sir.

Q. When you got over there, just tell the jury what you saw around there and all about it,—just as though they wanted to get information from you and you were trying to give it to them—just as you saw it; give them the same picture you have in your own mind.

Mr. BORYER.—We object to the witness answering the question unless it is confined to the plaintiff in the case.

By the COURT.—Yes, the surrounding circumstances—of course he cannot confine it so he has to exclude the conditions that he saw pertaining to this

(Testimony of James McGill.)

plaintiff—give the surrounding circumstances as you saw them there as near as you can.

A. Well, when we went into the tunnel the men—there was quite a few of them—they were caught in the timber.

Q. Explain to the jury how they were caught—turn to the jury and make them see it as you saw it.

A. They were all mixed up with the timber, that is the only thing I can say—they were mixed up with the timber, tangled up with the timber and dirt. I couldn't say in what [62—27] position they were in.

Q. Tell the jury whether or not these timbers were the cross-ties or the pieces from above or the side pieces.

A. Why, they were the main timbers, the posts—the main timbers or posts and the braces.

Q. Anything from the roof?

A. There was nothing from the roof—there was just the three sets, if I remember right, the three sets of timber.

Q. From the roof?

A. Yes, posts—there was nothing only the posts and the braces, that was all.

By the COURT.—Was the accident by reason of the pressure on one side or the other side or by reason of the pressure on top or pressure all the way around, if you know from the looks of it, or state what it showed with reference to that point.

A. The way it looked to me it caved in from all around, from on top and from the sides both—I

(Testimony of James McGill.)

don't know where the pressure came from; I had not been in the tunnel and don't know how it looked in there or how the timbers were on or how the roof was.

By the COURT.—I will ask another question, with the permission of the attorneys. Was there ground all the way around so it was a solid block at this particular point,—had the dirt followed the timbers in? A. The dirt followed the timbers in.

Q. Had you ever been through the tunnel before?

A. Yes, sir.

Q. Often? A. Yes, quite often.

Q. Do you know when the tunnel was first completed, about when? [63—28]

A. I don't know for sure just what date.

Q. Some time in 1910?

A. Some time in 1910, I think.

Q. And they ran trains through it a while?

A. Yes, they ran trains through it.

Q. When was the first cave in, that which Mr. Boryer mentioned, about when?

A. Well, it was in 1911.

Q. How long before this particular one that you have been telling the jury about?

A. I don't just recollect now, it might have been the latter part of May, I am not sure.

Q. The latter part of May, 1911?

A. Yes.

Q. Now, was the cave-in that occurred in May, 1911, at the precise place where the cave-in in August was? A. Close to it, I think.

(Testimony of James McGill.)

Q. That was another part of the tunnel that caved in in August and caught Reeder?

A. It had caved in there before.

Q. At this precise point? A. Yes.

Q. The timbers had given way before that, before that time, or do you know?

A. Well, the tunnel had been timbered and they had taken the timber out and the timber had caved in and they were timbering the tunnel.

Q. How is that?

A. The tunnel had been timbered and it caved in and they were timbering the tunnel again at that time—there was a small cave before this. [64—29]

Q. (By Juror TROUT.) I want to ask if that tunnel had been lagged up—had it been lagged overhead and at the sides.

A. I don't know, I am sure,—I expect it had.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. You are working for the company at the present time? A. Yes, sir.

Q. Have you ever talked to anyone connected with the company in regard to this accident?

Mr. COBB.—We object to that,—he should ask whether he has talked with counsel for the plaintiff and not the defendant.

By the COURT.—Objection overruled. He may say whether he has talked to anybody or not.

A. No, I never did.

Q. And you say you were working on the line of

(Testimony of James McGill.)

road that extends from Cordova to Chitina during that time,—by that I mean that you were working on the roadbed that extends from Cordova up beyond Chitina and up to Kennecott—that is where you were working?     A. Yes, sir.

Q. And that is what you mean by saying that you were working on the roadbed of the Copper River & Northwestern Railway?     A. Yes, sir.

Q. Do you know of your own knowledge who owns that roadbed?     A. I don't know.

Q. And then what you meant was that you were working on this line of railroad that extends from Cordova to Chitina and from Chitina on up to Kennecott?     A. Yes, sir. [65—30]

Q. And at the time of this accident, you were then working on what was called Chitina bridge, were you or were you not?

A. Yes, about the time of that accident.

Q. That is located about a mile from the tunnel, is it not, approximately about a mile, would you say?

A. I don't know just the distance, somewhere about that.

Q. At the time of the accident in the tunnel in which Reeder was in, were you on the end of the tunnel toward Kennecott or the end of the tunnel toward Chitina?     A. Chitina.

Q. Toward the Chitina end?     A. Yes.

Q. What end do they usually designate that as, in regard to direction—do they call it the east end?

A. Well, I don't know what they call it but I don't think it is east.

(Testimony of James McGill.)

Q. Isn't it commonly called the west end or the Chitina end?     A. Yes, sir, the Chitina end.

Q. As distinguished from the other end toward Kennecott?     A. Yes.

Q. What work were you doing there?

A. We were tearing down a shed.

Q. What kind of a shed?

A. Why, it was a shed, to hold the shed they put in to keep the dirt from sloughing down the bank, to catch the dirt.

Q. You were tearing out a shed in the tunnel?

A. No, in the approach, in the cut.

Q. In the approach to the tunnel?

A. Yes, sir.

Q. Now, then, could you walk from that end that you were working, into and through the tunnel?

[66—31]

A. You could at that time.

Q. At the time that you saw Mr. Reeder there?

A. Yes.

Q. There had been a cave-in at that end of the tunnel, prior to this, had there not?

A. I think there had, if I remember right.

(By the COURT.)

Q. The question before that—was your answer that at the time Reeder was injured you could walk through?     A. Yes, sir.

Q. When Reeder went to work that morning, he walked through the tunnel?

A. Yes, sir, he walked through the tunnel.



(Testimony of James McGill.)

(By Mr. BORYER—Continued.)

Q. Then he walked in through that end of the tunnel and didn't walk around the other end?

A. No, he walked through the tunnel.

Q. Did you notice if he had anything with him?

A. He had some tools, carpenter's tools—I don't remember what they were.

Q. And I believe you stated he walked in through the tunnel, as he went in the tunnel? A. Yes.

Q. From the end you were working at?

A. Yes.

Q. You didn't see the accident? A. No.

Q. Were you employed on that tunnel?

A. No.

Q. You are one of the pile-driver men, bridge men, of the company? [67—32]

A. Yes.

Q. Then that is all you know about the accident to that tunnel is it?

A. Yes, that is all I know about the accident—that is all.

Q. You were not present when it happened?

A. No.

Q. And didn't see it when it fell? A. No.

Q. About how long had this cave-in, or rather, the first cave-in—about how long was that before the cave-in that caught Mr. Reeder, approximately?

A. Well, I am not sure, I couldn't say. I think it was in May some time, the latter part of May.

Q. And this other happened the 7th of August,—about that time? A. Yes.

(Testimony of James McGill.)

Q. From the time of the first cave-in up until the time of the cave-in in which Reeder was caught were they running any trains through that tunnel?

A. Yes, I think they did—I think there were trains running through it.

Q. Was the dirt all out of it?

A. I am not sure—I think the track was clear at times.

Q. I will ask you this question, do you know if there was any trains running through there from the time of the first accident up to the time of the second cave-in?     A. No, I don't know.

Mr. BORYER.—That is all.

Witness excused. [68—33]

**[Testimony of Karl Johnson, for Plaintiff.]**

KARL JOHNSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name?     A. Karl Johnson.

Q. Where do you live?

A. I have been residing around Cordova here for nearly on to five years.

Q. What is your occupation?

A. Working around pile-drivers, bridge work.

Q. That is your present occupation?     A. Yes.

Q. State to the jury whether you ever did any work in tunnels.

A. I have done some work in tunnels.

Q. Whereabouts?

(Testimony of Karl Johnson.)

A. I worked up in the Chitina tunnel.

Q. Anywhere else?

A. No, that is all.

Q. You have seen the work in tunnels?

A. A good deal of it?

Q. Timbering, etc.?      A. Yes, sir.

Q. Whereabouts?      A. Back east.

Q. Were you employed back there on railroads?

A. No.

Q. What kind of tunnels?      A. Mud tunnels.

Q. Where were you in the month of August, 1911?

A. At Chitina. [69—34]

Q. What were you doing?

A. Working in the tunnel there most of the time.

Q. Which tunnel?      A. Chitina tunnel.

Q. Whose tunnel is it? Tell the jury—they don't know whether it is a mining tunnel or what it is—tell them what tunnel it was and all about it.

A. The Copper River & Northwestern Railroad tunnel.

Q. The one the line of railroad goes through?

A. Yes, sir.

Q. What were you doing in that tunnel?

A. Working with the timber gang.

Q. Why was it necessary to timber it?

A. To keep it from caving in.

Q. Had the tunnel been completed?

A. Yes, sir.

Q. When was it completed, if you know?

A. I don't remember what time it was completed.

Q. About how long before that?

(Testimony of Karl Johnson.)

A. About a year before that, I guess.

Q. And they had been operating trains through it?

A. Yes, sir.

Q. Do you remember when the first cave-in came, afterwards?

A. No, I was not around there at the time.

Q. When did you first learn about it?

A. I had been in the upper end of the branch there and came down there about the first of August.

Q. When you got there what condition did you find the tunnel in?     A. It was caved in.

Q. How much of it had caved in?     [70—35]

A. I think about 100 feet of it, I guess.

Q. What is the length of the tunnel about?

A. I don't remember,—I don't know how long it is.

Q. Give us some idea.     A. About 400 ft., maybe.

Q. There was about 100 feet of it caved in?

A. Yes, sir.

Q. About where was that cave-in?

A. About the middle of it.

Q. About the middle of it there was about 100 ft. caved in?     A. Yes.

Q. What did you go to doing?

A. Went to work in the timber gang.

Q. How were you timbering it—what sort of timbering were you putting in?

A. Putting in posts until we got to the cave-in, to strengthen the rest of the tunnel.

Q. To strengthen the rest of the tunnel?

A. Yes, sir.

(Testimony of Karl Johnson.)

Q. What was the matter with that tunnel up to where it caved in, where you were putting in these posts, that made it necessary to put in the posts?

A. The timbers were weak, I guess.

Q. Were these timbers that you speak of as being weak the original timbers, put in when the tunnel was built?     A. Yes.

Q. I want you to explain to the jury why you say the timbers were weak and how they were put in there—what was the method of construction used?

A. The timber was spruce timber, round poles, put in in sets [71—36] there, bents, with lagging on it to hold the dirt up.

Q. Just repeat that.

A. It was native timber and put up in sets of bents and had lagging on it, round timber.

Q. How far apart were these posts, these up-rights?     A. I should judge about four feet.

Q. About what was the size?

A. About 5 or 6 inches, I guess.

Q. And how was the roof secured by the timbers that were put on top of these posts,—what sort of timbers were those?

A. They were the same timbers, native timber.

Q. Can you give the jury some idea about the method of the construction of that roof—can you do that?

A. Yes, I think I can. (Witness makes drawing.)

Q. (By JUROR.) Where do the posts reach?

A. Up to this corner right here.

(Testimony of Karl Johnson.)

Q. (By JUROR.) And what sustained that other up there?

A. There are some joists across there.

Q. How wide is that tunnel?

A. I don't remember now.

Q. Stand up and explain what you have drawn on that paper.

A. That is the posts there and this is the joists here and this is the cap up on the top here—that is the top of the tunnel.

Q. (By JUROR.) I would like to ask the witness a question. The posts that you speak of as being about 8 inches in diameter more or less, were those of hewn or sawed timber?

A. The posts were larger—it was the top of the timber, the lagging, that was 6 inches.

Q. Were they sawed? [72—37]

A. No, they were round timbers.

Q. And are these the ones they were taking out and replacing by others?

A. No, they were just putting in others between them, in between the bents.

Q. How big were the posts?

A. The posts must have been all the way from ten to twelve inches round.

Q. I hand you a paper here and ask you if that better represents than your own drawing the way these timbers were put in.

A. These are the new sets, yes.

Q. Are those the new or old ones? The way that looks there, that would be square timbers.



(Testimony of Karl Johnson.)

Q. It wouldn't indicate whether it was square or not. I am asking more particularly about the roof.

A. Yes, sir, that is something like it.

Q. Are you sure that is the way they were put together on the roof, set in?

A. Yes, that is the way they were set in.

Mr. COBB.—I ask to have that marked Plaintiff's Exhibit "A." It is so marked.

Q. Were you in there at the time the accident occurred? A. Yes, sir.

Q. Now, just tell the jury what happened.

A. That morning when we started to work—I was shoveling that morning—I was working up ahead something like an hour I guess, shoveling gravel. That morning when we started to work, I started in there and the timber gang had caught [73—38] up with the muckers there and the timber work was kinder short and me and a couple of other fellows went to shoveling and I went up in front there and shoveled, and worked about an hour and she caved in.

Q. Did you see the cave when it started?

A. Yes, I see it slough there once or twice.

Q. I want you to tell the jury just how that came down, so they will see it just as you remember it.

A. I was working up there, along the side there, and we were shoveling out dirt from the front and from the sides and wheeling it out and dumping it into a flat car there.

Q. Now, before you go any further—where were you getting that dirt from?

(Testimony of Karl Johnson.)

A. From in front and on the sides there.

Q. The dirt that had caved in ahead of where you were working? A. Yes.

Q. The old cave-in?

A. The old cave-in, yes.

Q. And then what happened over you?

A. Why, she came down.

Q. What made it come down?

A. It was digging that dirt away, I guess, or something.

Q. The timbers gave way?

A. The timbers gave way; yes.

Q. I want you to tell the jury just what happened there.

A. As I have said, we were shoveling it out there and it came down.

Q. Whereabouts did the timbers give way—where did the timbers give way? [74—39]

A. The top gave way.

Q. The top gave way? A. The top gave way.

Q. What part of the top?

A. I don't know now. I wasn't looking up there—it all came down at once.

Q. This whole top fell out?

A. The top came right down over us.

Q. Do you know whether that is a proper construction or not to support the roof of a tunnel?

Mr. BORYER.—We object to that; he is not qualified to answer.

Q. I am asking if he knows.

By the COURT.—He may answer whether he knows.

(Testimony of Karl Johnson.)

Q. Do you know whether that is a proper construction to make the roof of a tunnel safe?

A. No, I do not.

Q. You don't know that?     A. No.

Q. Did you ever see any different construction used?     A. No, not as I know of.

Q. Not that you know of?

A. No—I have been in tunnels but never paid really much attention to where or how the timbers were.

Q. The new timbers that you were putting in, were they put in like that at the top?

A. I just helped raise the posts and never put in the top of them.

Mr. COBB.—That is all. [75—40]

Cross-examination.

(By Mr. BORYER.)

Q. Are you working for the company at present?

A. No.

Q. You have not been working for the company for some time?

A. No, I ain't worked for them for about three months, I guess—or two months, I guess.

Q. When did you begin working on that particular tunnel?

A. About the first day of August, 1911.

Q. And you were one of a gang that was clearing away the dirt, were you?

A. I was working in the timber gang up to about two days before the accident.

Q. And then about two days before the accident,

(Testimony of Karl Johnson.)

you began working in what gang?

A. We had to shovel out some dirt there to clear away.

Q. That was under whom?

A. That was under Mr. O'Neill, I guess.

Q. Who was your foreman in the timber gang?

A. McFarland.

Q. Do you know where McFarland is?

A. No, sir.

Q. Do you know whether he is in the country?

A. No, I do not.

Q. While you were working in the timber gang, what work were you doing?

A. Helping to raise posts and getting timbers in, mostly, was what I was doing.

Q. For what purpose?

A. For the part that didn't cave in there,—for the part of the tunnel that hadn't caved in,—strengthening the timbers. [76—41]

Q. Is that the portion that caved in and caught Mr. Reeder? A. No, sir.

Q. What portion of the tunnel were you working in? A. On the Copper River end of the tunnel.

Q. You call the Copper River end the part toward Chitina? A. No, toward Kennecott.

Q. Up toward Kennecott? A. Yes, sir.

Q. When you were located working for Mr. McFarland, sawing timbers at the timber pile, that was at that end of the tunnel were you? A. Yes, sir.

Q. Now, in order that the jury may get a clear impression of that, I will ask you if you were working

(Testimony of Karl Johnson.)

for Mr. McFarland, one of the foremen, on that tunnel. A. If I was working for him?

Q. Yes.

A. I was working for him for a while there; yes.

Q. And how many men were in your gang at the time you were working for Mr. McFarland, about how many?

A. I don't remember, about eight or ten, I guess.

Q. What were you doing?

A. We were framing timbers.

Q. You were framing timbers for what?

A. For the tunnel.

Q. Where were you framing these timbers,—where did you do your work?

A. On the outside.

Q. On the outside of the tunnel? A. Yes.

[77—42]

Q. Just on the outside of the tunnel, the end toward Chitina—is that correct? A. Yes, sir.

Q. Your work consisted of sawing and making timbers there, to be placed in the tunnel? A. Yes, sir.

Q. For what purpose?

A. For to put in between the other timbers.

Q. The tunnel had been timbered one time before that, had it? A. Yes, sir.

Q. And now you were making new timbers and putting in new timbers in the tunnel—was that in the place of old timbers or was it extra timbers that you were putting in? A. Extra timbers.

Q. For the purpose of strengthening the tunnel frame, is that correct? A. Yes.

(Testimony of Karl Johnson.)

Q. What kind of material were you using?

A. 12x12.

Q. 12x12 for what?      A. For timbers there.

Q. Was that for the posts?      A. Yes, sir.

Q. The 12x12 were for the posts?      A. Yes, sir.

Q. What sized timbers were you using for the caps?

A. About the same size, I guess. I don't remember exactly.

Q. And the timber that crossed or went up in that shape (indicating)—what timber was that?

A. The joist I call it. [78—43]

Q. And about what sized timbers were you using for the joist?

A. About the same size, I guess. I don't remember exactly.

Q. All your timber then you think was about the same size?      A. The same size.

Q. To the best of your recollection?      A. Yes, sir.

Q. Was that native timber or foreign timber?

A. It was foreign timber.

Q. Oregon fir, was it not?

A. I don't know where it came from, but it was fir, I guess.

Q. And then you had, up to the time of the accident, retimbered all of the tunnel, from the Kennecott end towards the Chitina end, with the exception of four bents?

A. Either four or six bents—I don't remember.

Q. All of the other had been retimbered?

A. Yes.



(Testimony of Karl Johnson.)

Q. Now, then, at the time of the accident you were retimbering these four or six bents, were you not?

A. No, sir.

Q. What were you doing?

A. We were taking out the dirt.

Q. For what purpose?

A. To get in the other timbers.

Q. To retimber? A. Digging it out.

Q. First, you had to take your dirt out, in order to get your mudsills and to get your other posts, in, did you not? A. Yes, we had to dig the dirt away.

Q. And that is what you were doing?

A. Digging the dirt away. [79—44]

Q. Digging the dirt away? A. Yes.

Q. And taking it out? A. Yes, sir.

Q. For what purpose was that being done?

A. For getting into the other timbers, I guess.

Q. So as to retimber these four or six bents, was it not? A. Yes.

Q. Do you understand my question?

A. Yes, sir.

Q. For the purpose of retimbering, abstracting those other four or six bents? A. Yes, sir.

By the COURT.—You mean to retimber, putting in the same as was already down, or extra timbering?

Q. Extra timbers, was it not?

A. It was all extra timbers.

Q. You didn't take out the old timbers and put in extra timbers to make it more secure? A. Yes, sir.

By the COURT.—To get the picture a little more plainly before us—

(Testimony of Karl Johnson.)

Q. When you speak of the four or six bents, were they up there yet, or were they broken by some accident? A. No, they were there yet.

Q. Were the caps there yet? A. Yes, sir.

Q. And the lagging? A. Yes, sir.

Q. Was the dirt in under those?

A. The dirt was over them. [80—45]

Q. I mean the dirt you were working on?

A. Yes, sir.

Q. That was underneath those timbers?

A. Partly under the last bent.

Q. You were working pretty well ahead in the breast then of the four or six bents?

A. I was working on the second bent from the end.  
(By Mr. BORYER—Continued.)

Q. Where had this dirt come from that you were taking out—had it fallen or was it earth you were taking out for the purpose of getting in other timbers? A. It had fallen down.

Q. It had fallen down from above?

A. Yes, it had fallen down from above.

Q. Was that part of the dirt of the other cave-in that they had had?

A. I don't know about that other cave-in.

Q. Was that close to that?

A. This last cave-in you mean?

Q. I mean the one in which Reeder was hurt—there was a cave-in before that?

A. It was all caved in there.

Q. And was this a portion of the original cave-in then? A. Part of it; yes.

(Testimony of Karl Johnson.)

Q. And the dirt you were taking out was part of the cave-in that had fallen before Mr. Reeder was hurt—is that correct?     A. Yes, sir.

Q. And you were one of the carpenters that was employed to retimber and place these other timbers in and to strengthen [81—46] the tunnel?

A. Yes, sir.

Q. Now, do you recall anyone else that was in that gang of men in the carpenter gang, I mean,—yourself and who else?

A. I don't know the names of all of them. I know the names of a few of them.

Q. Name what you can. Reeder was one, was he?

A. Yes, sir.

Q. Anyone else?

A. Chris Likits was one, and John Lindquist.

Q. Anyone else?

A. Not as I know. There was quite a few men there but I don't know the names of them, though.

Q. How long had Reeder been working in this gang of men?

A. Been working there all the time I was there.

Q. And you were doing this kind of work all the time, were you?     A. Yes, sir.

Q. The day before the accident happened—where were you working that day?

A. I was working in the tunnel.

Q. What were you doing in the tunnel?

A. I was digging dirt.

Q. The day before that where were you working?

A. I was working in the tunnel.

(Testimony of Karl Johnson.)

Q. Were you working as a carpenter that day—in shoveling that dirt, that was the day before that, where were you working?

A. I was working outside most of the time.

Q. Was it the day that you were working in the tunnel shoveling dirt that the cross-piece was nailed up? [82—47] A. Yes.

Q. Do you remember who nailed that cross-piece?

A. Yes.

Q. Who was that?

A. John Sutton and a fellow named Likits and myself.

Q. What did you put that cross-piece up *that* for?

A. It was put up there as a brace.

Q. A brace for what purpose?

A. For holding the bent, I guess.

Q. What was the size of that brace that you put up there?

A. 3x12, I guess—3x12 I think—a plank.

Q. Did you nail it securely?

A. We nailed it with an 8-inch spike at one end and a 60-penny nail on the other.

(By the COURT.)

Q. Where was this brace?

A. The brace was up right at the part that caved in, them four bents, I believe it was, the four bents that caved in.

Q. When did you put that on there?

A. Put it on about a week, I guess, before the cave-in.

Q. Was it just one brace you put in there?

(Testimony of Karl Johnson.)

A. That is all I put up; yes.

(By Mr. BORYER—Continued.)

Q. I hand you this paper and ask you if you will show to the jury just where that brace was put on and what it was put on.     A. I don't get that.

Q. I will ask you if this brace was placed acrossed the segments of the tunnel.

A. Yes, I believe it was.     [83—48]

Q. Do I understand that the segment is the timber that connects with the upright post and with the top of the tunnel?     A. Yes, sir.

Q. Then that brace was placed there by you and two other carpenters?     A. Yes, sir.

Q. That is a correct representation of the brace that you put on these segments, is it not?

A. I don't remember exactly, something like that.

Q. But it was connected with these remaining bents that had not been retimbered, was it not?

A. How is that?

Q. It was connected with the bents that had not been retimbered?

A. I don't remember that exactly because I was not working there the last few days with that timber gang, when they were timbering that and I don't know exactly how that was put up there.

Q. But you put that on?

A. Yes, I put the brace on.

Q. And you were working on those four bents, were you not?

A. I was working on the bent next to the last one, shoveling dirt.

(Testimony of Karl Johnson.)

Q. That was one of the four that had not been completed? A. Yes, sir.

Q. Who told you to put that on there?

A. I believe it was Mr. Forrester.

Q. For what purpose did you put it on?

A. It was put on there as a brace for them bents, I guess. [84—49]

Q. You have had how much experience as a carpenter? A. The last five or six years.

Q. Why did he tell you to put that brace on there? By the COURT.—If you know.

A. He didn't say what reason to put that brace on for—he just told us to put it on and that is all I know about it.

Q. And you put it on because he told you to put it on? A. Yes, sir.

Q. Do you know if it was put on there as a permanent brace?

A. It was put on there for a temporary brace, I guess.

Q. For what purpose? A. Well—

Q. Was it put on there to strengthen and hold up those timbers? A. I think it was.

Q. Did you work on that tunnel when it was originally timbered? A. No, sir.

Q. It was properly lagged, was it not?

A. Yes, as far as I could see it was properly lagged.

Q. Where were you at the time of the cave-in?

A. I was working at the second bent from the end.

Q. Was this brace left remaining while you were working there? A. No, sir.



(Testimony of Karl Johnson.)

Q. It was not?      A. No, sir.

Q. Did you take it down?      A. No, sir.

Q. Did you remove it?      A. No, sir.

Q. Who did?      [85—50]

A. Chris Likits and John Sutton, I think.

Q. Did you see them remove it?      A. Yes, sir.

Q. Did you tell them not to remove it?

A. No, sir.

Q. How long after it was removed did the cave-in occur?

A. About fifteen minutes, I should think.

Q. Was it fifteen minutes?

A. I think so, about that as I can recollect.

Q. About how much work had you done between the time that this was removed and the time of the cave-in?

A. Well, I had been working quite a while, I know.

Q. What had you done?

A. I was shoveling dirt off of the sides there.

Q. And you think it was about 15 minutes?

A. About 15 minutes.

Q. You say that John Sutton and Chris Likits removed this brace?      A. As I remember.

Q. Did you hear Mr. Likits say anything to Mr. Sutton when he removed this brace?      A. No, sir.

Q. Who is Chris Likits?

A. He is a carpenter.

Q. What was he doing in that tunnel?

A. He was working with the timber gang.

Q. He was in the same timber gang that you were in?      A. Yes, sir.

(Testimony of Karl Johnson.)

Q. In the same timber gang that Reeder was in?

A. Yes, sir.

Q. Who is John Sutton? [86—51]

A. One of the fellows that got killed.

Q. Was he working there at the time?

A. Yes, sir.

Q. In what gang was he?

A. Working in the same gang.

Q. The same timber gang? A. Yes, sir.

Q. With you and Mr. Reeder and with Mr. Likits?

A. Yes, sir.

Q. You were all engaged in retimbering and restrengthening the tunnel?

A. We were at the other end of it the three days I was there—the last days I was not with him there.

Q. That is what you were doing at the time?

A. That is what we were doing at the time.

Mr. BORYER.—That is all.

(By Mr. COBB.)

Q. That brace that was nailed on there, did it have anything to do with the roof? A. No, sir.

Q. It didn't strengthen the roof any?

A. No, sir.

Q. And it was only put up in bents of the tunnel on one side for the purpose of preventing the up-rights working back and forth? A. Yes, sir.

Q. To strengthen those? A. Yes.

Q. It didn't strengthen the tunnel any at all. It merely [87—52] stiffened it, is that it?

A. Yes, sir.

Q. You say it was the roof that gave way?

(Testimony of Karl Johnson.)

A. Yes, sir.

Q. This brace didn't tend to strengthen that any at all? A. No, not that I could see.

Q. As a matter of fact, when that brace was put up there and they drove this spike into it, it split it, didn't it?

A. I don't remember that, whether it was split or not.

Q. At which end did you drive the spike in, the one lowest toward the ground or the upper end?

A. The upper.

Q. The other end was driven with two 60-penny nails? A. Yes, sir.

Q. Will you tell the jury the length of a 60-penny nail? A. It is about 6 inches long.

Q. Was that native wood, that brace?

A. No, the brace was fir.

Q. Did you notice it at the time it was taken out?

A. Yes, sir.

Q. The 60-penny nails had pulled over half out, had they not?

A. I never notice that, whether they were pulled out or not.

Q. Now, these new timbers that you were putting in there were put in with different construction than the old timbers that they were intended to strengthen? A. Yes, sir.

Q. I hand you another drawing which I ask to have marked Plaintiff's Exhibit "B" (it is so marked), and ask you if that correctly represents the method of construction of the new timbers that

(Testimony of Karl Johnson.)

were put in. [88—53] A. Yes, sir.

Q. I want you to tell the jury the difference in the size and the strength of these timbers from the old timbers that had been used there and explain to them the difference in the construction.

A. I don't know whether I could explain that to them—I don't think I could.

Q. You mean that you don't think that you have sufficient use of language to tell it to them?

A. No, sir.

Q. It does correctly represent, however, the method in which the timbers were put together?

A. Yes, sir.

Q. Now, I want you to tell the jury the difference in the size and strength of the timbers being used in there at that time and the ones that gave way and hurt Mr. Reeder.

A. Them old timbers that were in there were all native timbers, round timbers, I judge from about ten to twelve inches, the posts and the same with the segments and the caps.

Q. How far apart were they put?

A. About four feet, I think.

Q. Now, as I understand it, these new timbers that were put in there, were being put halfway between them? A. Yes, sir.

Q. So that more than doubled the strength of the tunnel? A. Yes, sir.

Q. The old original construction, was any of that being removed? A. No, sir.

Q. It was all left there? [89—54]

(Testimony of Karl Johnson.)

A. It was all left there.

Q. And as I understand it, the accident happened by the giving way of this original construction before the new construction was put in? A. Yes, sir.

Q. And yet you tell the jury that that tunnel as originally constructed had been used for the passage of trains, etc., until a part of it had given way at one time? A. Yes, sir.

Q. Do you know whether or not the taking out of that brace by Mr. Likits had anything to do with the fall of the roof? A. No, sir.

Q. It did not? A. No, sir.

Q. That roof fell, that accident happened, by this timber being too weak?

Mr. BORYER.—We object to that as leading.

By the COURT.—He may answer that question if he knows.

A. All I know, the brace was removed and I worked about 15 minutes afterwards, and it came down and I don't remember how it came down.

Q. It was the roof that came down and not anything that this brace held?

A. It was the roof that came down.

(By the COURT.)

Q. Where did the roof come down with reference to where the brace had been taken off?

A. I don't know that.

Q. You don't know whether it came down at the same place?

A. It all came down so quick. [90—55]

Q. From about how many different bents?

(Testimony of Karl Johnson.)

A. About four, I think—four or five. I don't recollect.

Q. Were the four bents that you were working at there next to the brace? A. Yes, sir.

Q. Some time ago in your testimony you said the first thing you knew was a dropping, as I understood—you were in two different places?

A. There was a few laggings missing and the dirt worked through that.

Q. Where was that with reference to those bents, the four bents?

A. I think there was one over where Dan Reeder was working, on the right-hand side of the tunnel as you go in there.

Q. And the other?

A. That was right opposite me—I was working on the left-hand side, the second bent.

(By Mr. COBB—Continued.)

Q. That was just pieces of lagging that was out and a little dirt sifting through? A. Yes, sir.

Q. How long after you noticed that was it before the fall came?

A. About 5 or 6 minutes, I should think—shortly before, anyhow.

(By Mr. BORYER.)

Q. These timbers were standing there when you and this carpenter-gang began work in the tunnel, were they? A. Yes, sir.

Q. They remained standing there until 15 minutes after this brace was knocked off, did they?



(Testimony of Karl Johnson.)

A. Yes, sir.

Q. They had not fallen before that time?

A. No, they were still standing there.

Q. There was no cave-in underneath those four bents, was there?     A. No, sir.

Q. Now, then, you say that after this brace was taken off that some dirt began to sift down where you were working and some began to sift down from the top where Reeder was working—where was it working from?     A. From the sides.

Q. From each side?     A. From both sides.

Q. The roof was then crumbling in from each side?

A. Yes, sir.

Q. Where you were working and where Reeder was working?     A. Yes, sir.

Q. What were you doing at that particular time?

A. I was shoveling.

Q. And what was Reeder doing?

A. I think he was working making a cut for the post.

Q. Whereabouts was he making this cut?

A. On the other side of the tunnel from me.

Q. Was that across the tunnel from where this brace was taken off or where the brace was taken off?

A. It was on the other side from where the brace was taken off.

Q. Just across on the other side of the tunnel?

A. Yes, sir.

Q. About what is the width of that tunnel approximately?

A. I should judge about 18 ft., 16 or 18 ft.

(Testimony of Karl Johnson.)

Q. Did you see this brace that was taken out after the cave-in? [92—57] A. No.

Q. Were you caught in the tunnel?

A. Yes, sir.

Q. And were you unconscious? A. No, sir.

Q. Were you taken out of the tunnel or did you get out by yourself? A. I got out by myself.

Q. And then where did you go from there, after you got out of the tunnel?

A. Went out on the Copper River end of the tunnel.

Q. Toward Kennecott? A. Toward Kennecott.

Q. Where did you go after that?

A. I went back into it again.

Q. Did you help to rescue the men?

A. Yes, sir, for a while I did.

Q. For how long?

A. For about 15 minutes or 20—about 20 minutes, maybe.

Q. What did you do?

A. Helped shovel and take away timbers.

Q. Did you see this piece, this brace that had been knocked off? A. No, sir.

Q. I believe you stated that you saw that the nails that were holding this brace were pulled out from the pieces that they were nailed to? A. No, sir.

Q. You didn't mean to say that, did you, if you did say it?

A. The brace was pulled out and the nails was pulled right [93—58] with the brace to it but after they caved in, no, I didn't notice the brace.

(Testimony of Karl Johnson.)

Q. That was pulled out by a crowbar, wasn't it, the brace? When they pulled this brace off, it was pulled off by means of a crowbar?

A. No, a small pinch-bar for pulling nails with.

Q. Who was working the pinch-bar?

A. John Sutton, I believe.

Q. And then you didn't see the timber after that?

A. He took it and took it back in the tunnel somewhere—I don't know what he did with it.

Q. Do you know whereabouts he packed it in the tunnel?

A. I don't know how far he packed it—he took it maybe ten feet back to clear for himself, so he could work there.

Q. What kind of timber was that, do you know?

A. 3x12 plank.

Q. Native timber?      A. No, sir.

Q. Fir timber?      A. Fir timber.

Q. Had the earth been cleared away out of the tunnel from the former cave-in?

A. Up to just about the second bent, I believe, from the end.

Q. Could you reach the point where you were working from the end of the tunnel toward Chitina?

A. Yes, sir.

Q. Was there any difficulty in reaching your work from that end?

A. Well, I never went through there only once.

Q. Where were you staying? [94—59]

A. Staying at the Katalla Company's camp.

Q. That was on this end of the tunnel, was it?

(Testimony of Karl Johnson.)

A. Toward Chitina.

Q. The Chitina end?      A. Yes, sir.

Q. Then in order to reach that tunnel by means of the other end you would have to walk around about a quarter of a mile, wouldn't you?

A. Just about that, I guess.

Q. While if you had gone in from this end it would only be a couple of hundred yards, would it not?

A. Something like that, I believe.

Q. Why didn't you go in from this end when you went to work?

A. Because it was too dark to walk through.

Q. And the dirt was on the track, was it not?

A. Yes, sir.

Q. The trains couldn't run through the tunnel, could they?      A. No.

Q. Do you remember about when the first accident happened?

A. You mean the cave-in before that?

Q. The accident that happened at this end of the tunnel before Reeder was hurt.

A. No, I don't remember that.

Q. It was before you went there?

A. I was working up at the upper end, up towards Kennecott, at the time.

Q. It had happened at the time you went there?

A. Yes, it happened before I went to work there.

Q. And the tunnel was not being used for the operation of trains through it, then, during that time?

A. No, sir. [95—60]

Q. They couldn't run trains through, could they?

(Testimony of Karl Johnson.)

A. No, sir.

Q. How did the trains connect or get from Chitina to Kennecott Mines?

A. They used the switchback.

Q. Instead of going through the tunnel then they would go around the switchback over the hill, through which this tunnel was constructed?

A. Yes, sir.

Q. You are not working for the Railroad Co. at the present time?     A. No, sir.

Q. Did I understand you to say that you were injured in there?     A. I was a little bit; yes.

Q. But you helped to get the men out?

A. Yes, sir.

Q. Worked there about how long?

A. 15 or 20 minutes.

Q. Then where did you go?     A. I went out.

Q. And where did you go after you went out?

A. Went to the camp.

Q. What camp?     A. The Katalla's Co. camp.

Q. What did you do in the camp?

A. I went home to get other clothes on, being as I was all dirty and full of mud.

Q. Did you change your clothes?     A. Yes, sir.

Q. Then where did you go?

A. Went over to that hospital they had there.

[96—61]

Q. And how long did you remain in the hospital?

A. For a couple of days I guess,—three days, I think.

(By Mr. COBB.)

Q. I believe you said you helped nailed this brace

(Testimony of Karl Johnson.)

on. A. Yes, sir.

Q. How long before the cave-in was that?

A. That must have been about a week, I think.

Q. And at that time people could get about in there underneath this place where it fell?

A. Yes, sir.

Q. There was plenty of opportunity to strengthen it up so it would hold, so the work could be completed? A. I think there was, yes.

Q. (By Mr. BORYER.) It did hold, did it not?

A. Yes, sir.

Witness excused. [97—62]

[**Testimony of Chris Likits, for Plaintiff.**]

CHRIS LIKITS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Chris Likits.

Q. Where do you reside?

A. Well, I have been living the last fourteen months in the Kennecott.

Q. How long have you been in Alaska?

A. About nine years.

Q. Were you living here in the year 1911?

A. In Chitina.

Q. What was your occupation at that time?

A. Carpenter.

Q. Whom were you working for?

A. I don't know. I was working for Mr. Heney and the Copper River & Northern Railroad and the Katalla Company.



(Testimony of Chris Likits.)

Q. What were you doing?

A. Worked on the bridge and some other matters.

Q. In the month of August where were you working? A. I was working in the Chitina tunnel.

Q. For the same people?

A. I don't know what company it was.

Q. It was on the Copper River & Northwestern Railway Co.'s lines and works, was it?

A. Yes, sir.

(Recess for ten minutes.)

Reconvened at 3:35.

Q. I believe at the time of adjournment you stated that in the month of August, the early part of that month, you were [98—63] working in the tunnel out there? A. Yes, sir.

Q. What were you doing?

A. We were reinforcing the tunnel, putting in some new timbers.

Q. Why was that necessary?

A. Why, the old timbers were too weak.

Q. You mean by that—

Mr. BORYER.—We object to that—I haven't any objection to his stating what he means by it.

By the COURT.—The witness can explain what he means by his answer if he wishes to or can explain to the jury in what way they were too weak.

Q. What do you mean when you say they were too weak? Explain fully.

A. I don't know exactly—I have to use my own judgment and opinion about it.

Q. That is what I want you to tell.

(Testimony of Chris Likits.)

A. The timbers were too weak; they were all round timbers, native timbers, this soft spruce and they were put in ten or twelve feet between—

Q. Is that the way those timbers were, as you describe them—the way the tunnel was timbered when it was originally constructed?

A. No, the original timbers were round timbers.

Q. Were these timbers you speak of as being too weak, were those the timbers that were used when the tunnel was originally constructed?

A. Yes, sir.

Q. And was used for train service? [99—64]

A. Yes, sir.

Q. Now, do you recall the circumstances of an accident happening there about the 7th of August, 1911? A. The tunnel caved in.

Q. Where were you at the time it caved in?

A. I was right under in the cave.

Q. What time of the day was it?

A. Well, I couldn't say exactly what time it was, but it was a little after 7 o'clock, I think.

Q. How long had you been at work?

A. That morning?

Q. Yes.

A. We went to work at half-past 6—we worked eleven hours a day. We went to work at half-past 6 and I had been working about 45 minutes, I think, or maybe an hour.

Q. Do you know the plaintiff, Dan Reeder?

A. Yes, sir.

Q. Did you see him that morning?

(Testimony of Chris Likits.)

A. No, I didn't see him but I heard him talking.

Q. When was your attention first called to him?

A. Well, before the cave-in,—just a little before the cave-in.

Q. How long before?

A. I couldn't say how long before,—ten minutes or so.

Q. A very short time?      A. Yes, sir.

Q. What was it that called your attention to him?

A. I heard his voice.

Q. Did you see the cave-in?      A. Yes, sir.

Q. Now, I want you to tell the jury this—how that cave-in occurred [100—65] and what caused it, and I will *ask* you Plaintiff's Exhibit "A" for identification and ask you if that represents correctly the way the timbering was put in that tunnel originally.

A. No, sir; that is the way the timbers were put in, the old timbers, the original timbers, and when I heard it, something cracked and I looked up to the roof and see this cap and this here coming down.

Q. Now, referring to Plaintiff's Exhibit "A," and calling your attention to the roof there of that timbering, I will ask you to state to the jury whether or not there was anything to hold that timbering up except the pressure on the arch.

A. Well, yes, there was the pressure—it was all full of dirt on top here; it was all piled up just as high as it would stand up, and of course here was caved in.

Q. Now, do you know what made that concern fall?

(Testimony of Chris Likits.)

A. Well, my opinion is, that the pressure of this roof and dirt on top here, while it was caved out on the sides, forced that cap through past this siding—forced this joint out and the cap came through.

Q. (By Juror.) There was nothing here to prevent it? A. No.

Q. When they started the new construction to remedy the defects of this original construction, I will ask you what was done, and call your attention to Plaintiff's Exhibit "B."

A. Well, you see the difference in them joints; that is stout enough if the weight was equal, equal pressure all around, but if it is not it forces through the joints, pass the points and goes by.

Q. Now, suppose all the weight was on top, that wouldn't force [101—66] that segment?

A. If all the dirt was on top here it wouldn't force through.

Q. That was the construction that was adopted with reference to the new timbers that were going in? A. Yes, sir.

Mr. COBB.—I will ask to have these admitted in evidence and marked Plaintiff's Exhibits "A" and "B." They are admitted and so marked.

Q. What sort of timbers was it that was in this tunnel as originally constructed—what character of wood?

A. They were native wood, spruce, round timbers.

Q. What sort of timbers were put in there at the time the accident happened?

A. Twelve by twelve fir.

(Testimony of Chris Likits.)

Q. There was a cave-in of these timbers ahead of the place where the cave came on the 7th, as I understand?     A. Yes.

Q. It had given way ahead?     A. Yes.

Q. You heard the testimony of the witness who preceded you on the stand on his cross-examination in regard to a brace?     A. Yes.

Q. Did you take that brace out?     A. No, sir.

Q. Did you see it taken out?     A. Yes.

Q. Who was it taken out by?

A. John Sutton.

Q. Did that brace have anything to do with the cave-in that Reeder was hurt in? [102—67]

A. I don't think so.

Q. Explain to the jury why you don't think so.

A. Because the timbers lay over the wall-plate, coming up from the cap on the segments in an angle, from the upper corner down to the wall-plate. The cave-in started on the opposite side where the joints were. The joints passed one another like that. The brace was back here on that side; the cave-in was on the opposite side.

Q. That brace had nothing to do with sustaining the roof?

A. No, the brace was strengthening the sides, the segments.

Q. Just simply to stiffen the sides?

A. Yes, sir.

Q. Were you caught in the cave-in?

A. Yes, sir.

Q. How far from where Reeder was?

A. Just on the opposite side.

(Testimony of Chris Likits.)

Q. Did you see him?

A. No, I couldn't see him—it was dark.

Q. Did you hear him?      A. Yes.

Q. What did you hear?

A. I heard him holler for help.

Q. What time was it that this cave-in occurred—did you say about a quarter past 7, along there?

A. Yes, after 7 o'clock.

Q. What time did they get you out?

A. About 11.

Q. Do you know whether they got Reeder out by that time or not?

A. No, Reeder got out after me; I was in the hospital when Reeder was brought in. [103—68]

Q. Do you know about what time it was they brought Reeder into the hospital?

A. I guess somewheres around noon—I couldn't say exactly when it was.

Q. You have been working for this company quite awhile?      A. Yes, sir.

Q. Do you know anything about them giving tags to indicate who the men are working for, brass tags, some marked K. Co. and some C. Co.?

A. Yes, sir.

Q. How were you tagged on that occasion?

A. I had been working for Heney in 1911, all that winter, and I came to town after Heney finished up. We came into Cordova and the bridge superintendent, O'Brien, 'phoned into town to McFarland to come out on the next train and fetch out 7 or 8 men with him and start to work on the Chitina span, and the next morning we went back again and when we



(Testimony of Chris Likits.)

got down to the camp, the timekeeper gave us a check marked K. on it, but after a while, about a week or so, maybe longer, they changed it and gave us octagon tags marked C. on it.

Q. How were you tagged on the day of this accident, the 7th of August?

A. Well, I think we had the two of them at the time; we kept the two of them,—they told us to keep them until we got paid off.

Q. If those men were working, as a matter of fact, were working for and being paid by the Katalla Company, who was the Katalla Company working for?

Mr. BORYER.—I object to that.

Q. If you know what was the Katalla Company's men doing—if you [104—69] were the Katalla Company's men?

A. I don't know.

Q. Whose property were they working on, if you know? What were they working on, what property?

A. The Katalla Company's property, I guess.

Q. What road were they working on?

A. On the Copper River & Northwestern Road.

Q. At the time that you were working with the two checks that month, were you paid with two pay checks? A. Well, I don't remember that.

Q. Don't you recall the checks you were paid with, what bank checks—who signed them?

A. Why, they were signed by Mr. Davis, I guess, the paymaster.

Q. The paymaster for what?

(Testimony of Chris Likits.)

Mr. BORYER.—If he knows.

A. I don't know whether it was the Katalla Company or the Copper River & Northwestern Railway Co.

Q. You don't know which one it was?

A. No, sir, I can't say.

Q. If you say it was the Katalla Company, the Katalla Company was at work on the Copper River & Northwestern Railway?      A. Yes, sir.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. (By Juror PEDERSEN.) Will you please inform the jury what, if any, lights were in the tunnel at the time you saw the timber give way?

A. Yes, we had two carbon lights in there, but we were working with a lantern. There was a reflector on this carbon [105—70] light but this reflector was punched during the cave and we were working toward the back of it and we could see all in the roof plainly, but we were in the shade—back of the reflector it was dark; two carbide lights were in there.

Q. For whom are you working now, at the present time?

A. Well, the last I worked was at Kennecott, the Kennecott Mining Co.

Q. I hand you a brass check Number 2318, marked K. C., and ask you if that is not the kind of a brass check that you had, with the exception of the number?

A. I don't know—we had one something similar to

(Testimony of Chris Likits.)

that and another one with C. marked on it.

Q. You did have a brass check, then, similar to that with K. C. marked on it, the same as this brass check has marked on it?

A. I fancy the K. was marked with a bigger, wider letter than this and I don't remember the company on it at all.

Q. Don't you know that was on it?

A. I don't know but that one I am referring to, it has a bigger letter—the K. marked on it.

Q. Don't you know that is the only brass check of that kind that was used on the road?

A. I don't know.

Q. You are not certain about that?

A. In fact, I worked for Heney and I don't remember.

Q. Heney's was larger?

A. Yes, Heney's was larger.

Q. And had on them, M. J. H.?      A. Yes, sir.

Q. And this is the same Katalla Co. check that was used by all [106—71] the men?

A. I don't know, I couldn't say that, because I don't know whether they used that one, but I know there was one similar to that marked K. on it and one with C. on it, but I fancy the checks were bigger, the kind we had.

Q. But they were marked similar to that?

A. Yes, they were marked similar to that.

Q. I hand you a brass check marked No. 750 with C. on it and ask you if that is not the check you have reference to, having C. on it?

(Testimony of Chris Likits.)

A. I seen them checks; yes.

Q. Isn't that the kind of check that was given to you and that you have reference to in the evidence?

A. I don't remember if it was given to me or not, but I thought we had an octagon check the timekeeper gave us.

Q. You say one check had K. on and one check had C. on?     A. Yes, sir.

Q. Do you know what that K. stood for?

A. No, sir—I guess Katalla Company.

Q. Do you know?     A. No, sir, I don't know.

Q. If you do know I want you to tell me, and if you don't know I want you to tell me you don't know—don't you know that that stood for Katalla Company?     A. I don't know.

Q. Don't you know that the C. stood for Construction?     A. No, sir.

Q. Do you know what the C. did stand for?

A. No, sir.

Q. And now do you mean to say that you don't know that that C. [107—72] stood for construction?     A. No, sir, I do not.

Q. And you don't know what the C. did stand for then?     A. No.

Q. Now, did I understand you to say that these were not similar checks to the checks you had reference to in your direct examination?

A. I thought that one marked K. was a bigger check, a larger check, an all around larger check.

Q. But otherwise it was a similar check?

(Testimony of Chris Likits.)

A. Pretty near, yes.

Q. And the one with C. on, was that a similar check to the one you have reference to in your direct examination?

A. I don't think so. I think that one I had was an octagon check but I ain't sure—I don't know.

Q. It had a C. on it? A. It had a C. on it.

Q. But you don't know whether that was used to indicate the word Construction or not?

A. I don't know.

Q. Now, you say that you were working on a railroad that is laid between here and the Kennecott mines at the time? A. Yes, sir.

Q. I will ask you if you know of your own knowledge who owns and did own that railroad at the time of this accident? A. No, sir, I don't know.

Q. I will ask you if at the time this accident happened, if you were not working for the Katalla Company. A. I don't know.

Q. Then you don't know for whom you were working? [108—73] A. No, sir.

Q. Don't you know that you were drawing Katalla Company checks—checks signed by the Katalla Company? A. I don't remember.

Q. How long had you been working in this tunnel prior to the accident? A. About ten days.

Q. What were you doing in the tunnel?

A. Putting in timbers.

Q. What for? A. To reinforce the tunnel.

Q. Who was assisting you?

A. Well, I don't know what you mean.

(Testimony of Chris Likits.)

Q. Who was working with you?

A. John Sutton was my partner.

Q. And were you working there as a carpenter?

A. Yes, sir.

Q. Sutton was working as a carpenter, was he?

A. Yes, sir.

Q. And who else was working as a carpenter with you on this particular work?     A. Dan Reeder.

Q. The plaintiff?     A. Yes, sir.

Q. Who else?

A. Lockhart, I don't know his first name.

Q. And who else?

A. I don't know that gentleman's name that works with Dan Reeder, I forget his name—with Dan Reeder at the time.

Q. What was Mr. Reeder and the man working with him doing? [109—74]

A. They were getting ready to put in daps into the wall-plates to get some timbers in.

Q. And you had been working there about ten days?     A. Yes, sir.

Q. And had Reeder been working there about the same length of time with you?

A. Yes, I guess when we started on the tunnel, when we came back from up the line, I don't know how long it was, but it was about ten days, I guess.

Q. At the time of the accident did someone remove a brace from the timbers of the tunnel?

A. Yes, before the accident.

Q. Who was that?     A. John Sutton.

Q. Did you tell him to remove the brace?



(Testimony of Chris Likits.)

A. No, sir.

Q. Did you tell him not to remove the brace?

A. Yes, sir, I told him not to touch it.

Q. What else did you say to him?

A. I told him to leave the brace alone and, "You have to see the foreman first before you take it off." I thought there was quite a lot of weight on that brace, and of course the timbers were pretty shaky, and I told him not to touch that brace, leave it alone, but the brace was right in the way where the dap had to go, and I told him he had better see the boss and put in another one before we touched that one, but he said, "It will hold up anyhow," and he takes his claw-hammer, two feet long, and gets it between the brace and the wall-plate on the lower end and pries the brace loose. There was a space of about two inches between, and it was [110—75] spiked with two 60-penny nails on the lower end and couldn't hold more than an inch and a half in that native timber. He pries that end in and went on top and chopped off the edge of it, on the end; the top end was spiked by an 8x12 bull spike and from the nail, where the spike was, it split and ran up to an angle, about 4 ft. back, it cracked off, it was split. He just went up there and cut a sliver off and the brace fell down and we used that for staging; we had a staging up 8 ft. above the track, maybe more, so he could get at the wall-plate to cut a dap in.

Q. He didn't wait to take it up with the foreman then? A. No, sir.

Q. And are you certain you told him not to take

(Testimony of Chris Likits.)

that down, not to take that brace off?      A. Yes, sir.

Q. Why didn't you want him to take that brace off?

A. Because I thought the timbers were pretty shaky and it was not used to hammering around there, and to leave it alone.

Q. How long after that brace was taken off was it before the cave-in occurred?

A. I don't know exactly—maybe about seven or eight or ten minutes, more or less, but it was a short time after.

Q. It may have been five minutes?

A. It may have been five minutes.

Q. Don't you think it was about five minutes?

A. I don't know for sure what time it was.

Q. It was somewhere between five and ten minutes, you would say?      A. Yes, sir.

Q. Did I understand you to tell the jury that that is a correct representation of the framework in the tunnel, Plaintiff's [111—76] Exhibit "A," as it originally stood?

A. Well, it may not be exactly to the right bevel there, but the bevel is about that shape and that is the wall-plate; the timbers, they are from post to post; the joints were on top.

Q. I will ask you what you call the timber that connects with the upright post, from this tunnel, and connects with the top or cap of the tunnel?

A. That is the segment.

Q. Now, then, where was this brace that was knocked off attached to—to what was it attached?

(Testimony of Chris Likits.)

A. Well this brace was—now, suppose this is the first set from the cave, that is looking in from the Kennecott end of the tunnel; that is the first bent. The brace ran down from this point, ran on an angle down to the wall-plate, down here for four sets—for three sets. It started here to run down in this angle, down to the wall-plate, right over here. There is another set comes out here and another one out here and one out here and from this point out, that is the first one facing the cave-in, it runs down here down to the wall-plate.

Q. (By the COURT.) The braces would be about how long?

A. They were about 18 or 20 ft. timbers, 3 by 12's.

Q. I hand you a drawing and ask you if that represents the framework of that tunnel at the time of the cave-in. A. Yes, sir.

Q. Now, then, I will ask you to show the jury and tell them what that top timber is and point out the timber you mean as the top timber.

A. The cap? [112—77]

Q. Yes.

A. Well, that is the cap here; that is a cap there and that is the segment there.

Q. I will ask you what that timber is that crossed the tunnel and attached to the two segments.

A. That is by sawing the end here?

Q. No—wasn't there a timber across the tunnel?

A. Yes, sir.

Q. Isn't that the timber that reached across the tunnel?

(Testimony of Chris Likits.)

A. No, not up here—it is down here. There was a timber down here and a timber down there, but there was no timber up above there.

Q. Where is the cap?

A. That is the cap up here; that is retimbered and we had a staging up there to work on this wall-plate up here.

Q. Were you ever above the platform in the tunnel?

A. Well, I haven't been working for four or five days, and I came back that morning and went to work on the tunnel, put the plate down here. I came in here from the outside and started to work and the foreman told us to go ahead and get this dapping done in here, so we didn't have no time to look around, and I just saw this frame—he took it off. Sutton I told not to touch it, and when he took that off why about *about* ten minutes after there was a cave-in. Before the cave came in this corner it came down here first, this joint. When I see it—I heard it snap—and I hollered, "Look out," and in a moment everything was gone, the lights disappeared and this was the point—this cap was pointing down like that when I see it first.

Q. And you don't remember this timber across here? [113—78] A. No, sir, I do not.

Q. Were you under or above the platform?

A. I was here—I was about three or four sets back from the cave.

Q. Three or four sets back from the cave?

(Testimony of Chris Likits.)

A. Yes.

Q. You had a platform across the tunnel?

A. Yes, sir.

Q. Were you working on top of that platform or underneath it?     A. On top.

Q. And you were back about three or four bents from the place where you saw this start down?

A. Yes, sir.

Q. Back which way?

A. Towards the opening from the cave.

Q. Towards the opening you had gone in?

A. Yes, sir, towards the Kennecott end.

Q. Did the cave-in extend beyond these four bents?

A. No, I don't think so—it might; I don't know.

Q. Then you were standing at the time that the cave-in happened about four bents back from the Kennecott end, from the point where the tunnel started to cave in?

A. Yes, sir, about four bents.

Q. And where was Reeder standing?

A. He was about—I know he was on the opposite side, but I don't know whereabouts.

Q. None of the retimbered tunnel caved in, did it?

A. No, sir.

Q. And you only had four bents that you were re-timbering?     A. Yes, sir. [114—79]

Q. Do I understand that you were standing on the outside of the timbers where it caved down?

A. On the outside?

(Testimony of Chris Likits.)

Q. Yes, by that I mean standing under the portion of the tunnel that had been retimbered?

A. No, if I was in there, if I stood outside I couldn't be caught, I don't think.

Q. If you were four bents back you would be standing on the outside, would you not?

A. Yes, I would.

Q. The general work that you were doing there was to make those four bents more secure?

A. Yes, sir.

Q. You didn't consider that the tunnel was properly framed, sufficient strength, and you were strengthening it up, putting in new timbers?

A. Yes, sir.

Q. What kind of timber were you using?

A. Twelve by twelve.

Q. Native timber or foreign timber?

A. Outside timber.

Q. How old are you?      A. 35.

Q. How long have you worked in the carpenter business?      A. About fifteen years, on and off.

Q. What do you mean by on and off?

A. I worked on the Alaska Central for about six months and then I haven't worked until I came to the Copper River & Northwestern here, and then I didn't work there more than [115—80] about eight months or so on it, that is, for Heney, and then I started for the Katalla Company.

Q. And you were working for the Katalla Co. at the time you were injured?

A. Yes—I don't know; it was for the Katalla



(Testimony of Chris Likits.)

Company or the Copper River & Northwestern Railway Co.

Q. You don't know which one?     A. No, sir.

Q. Did you help to retimber that portion of the tunnel that was retimbered back of these four bents?

A. Yes, sir.

Q. Was Mr. Reeder working with you?

A. Yes, sir.

Q. What, if any, other steps did you take to brace the tunnel, with the exception of putting on this brace?

A. I don't remember. I know we put in some—about a week or so before we put in some temporary posts in the middle of the caps there; some caps were broke and we put in temporary posts in the middle of the caps.

Q. Where were those posts?

A. Somewhere in the middle of the tunnel, the middle of the timbers that were left.

Q. The middle of the tunnel?     A. Yes, sir.

Q. More than one post under each bent?

A. No, one post in the middle of the cap, to support the cap.

Q. One post was extended from the base or bottom of the tunnel and extended up and put under the cap—is that correct?     A. Yes, sir.

Q. What size of post was that?

A. I think they were 8x8. [116—81]

Q. Who put them in there?

A. Dan Lee and I was there and a few more, I guess—Reeder was there, Dan Reeder.

(Testimony of Chris Likits.)

Q. The whole carpenter crew put this in?

A. Yes, sir.

Q. What kind of timbers?

A. Eight by eight, I think.

Q. Native or foreign?

A. I don't remember now what they were, but I think they were fir.

Q. Then you had put a post extending from the bottom up under the cap on each one of those bents?

A. Yes.

Q. And you had put a brace across all four of these segments?

A. Yes, but them posts were way back to the tunnel, in the middle of the tunnel—they were not under those four segments.

Q. They were not under those four segments?

A. No, sir.

Q. How far back in the tunnel?

A. About the middle of the tunnel, what was left, that was from the cave to the portal, about the middle of it.

Q. Why did you put them in there?

A. One of the caps was broke in two.

Q. Why did you put it under the other three—why did you put the post under the other three spans—as I understood you to say, you put four in, one under each of the four spans?

A. No, them posts were put in,—that wasn't under the four sets, that cave-in—it was way back in the tunnel.

Q. You did put some in back, behind? [117—82]

A. Yes, further back.

(Testimony of Chris Likits.)

Q. *Why* you put in those posts there—that is what I am trying to get at.

A. To keep up the roof.

Q. Did it keep up the roof?

A. In that place, yes.

Q. And you put one under each span, did you?

A. Yes, I think one or maybe two. I don't remember well, but it is one or two, but I think it is one—put it right in the middle, I think it was.

Q. You had plenty of timbers there, did you not?

A. Oh, yes, quite sufficient there.

Q. How is that?

A. There was quite a lot around there, yes.

Q. Fir timbers?      A. Yes, sir.

Q. They were convenient, close to you there—these other timbers were close?

A. Yes, they were close.

(By Mr. COBB.)

Q. Whose business was it to have those posts put in and placed securely?

A. That was, I guess, the engineer in charge, or the foreman, I don't know which, but I was told by the foreman to come out after supper and help put it in.

Q. The foreman or engineer in charge—do you know who the engineer in charge was?

A. Mr. Forrester, I guess.

Q. This gentleman here?

A. Yes, sir. [118—83]

Q. That place could have been secured in time, within the ten days preceding that, so it would have

(Testimony of Chris Likits.)

been absolutely safe could it not, with proper care?

A. I think so.

(By Mr. BORYER.)

Q. It was secured up to the time of the accident, was it not?

A. Yes, to a certain extent it was secured, yes.

Q. It hadn't fallen down prior to this brace being taken off, had it?

A. No, it didn't fall down before; no, sir.

Witness excused. [119—84]

**[Testimony of John Reidy, for Plaintiff.]**

JOHN REIDY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. John Reidy.

Q. Where do you live? A. Cordova.

Q. How long have you lived here?

A. Six years.

Q. Were you living here during 1910 and 1911?

A. Yes, sir.

Q. What business were you in?

A. Mercantile business.

Q. Did you have any occasion to ship out over the Copper River & Northwestern line at that time?

Mr. BORYER.—We object to that as leading and suggestive. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. Is that the line up towards Chitina?

(Testimony of John Reidy.)

A. Yes, sir.

Q. I will ask you to examine a Bill of Lading that appears to be made out to you, made out to McDonald & Reidy—that is one of the bills of lading made out to your firm?      A. Yes, sir.

Q. Did you do quite a good deal of shipping in 1910 and 1911?      A. We did considerable.

Q. Is that a specimen of the sort of bills of lading you got?

A. Yes, sir.

Mr. COBB.—I offer this in evidence.

Mr. BORYER.—I object to it for the reason that it is a bill [120—85] of lading that purports to carry goods from Cordova to Miles Glacier, when this accident happened at Mile 131, some eighty miles beyond, a destination named in the bill of lading.

Mr. COBB.—It is over a portion of the same road.

Mr. BORYER.—I think not.

By the COURT.—If you connect it up it will be all right.

Q. These goods were over the Copper River Railway?      A. Yes, sir.

By the COURT.—It may go for what it shows, showing that shipment to Miles Glacier.

Mr. BORYER.—The reason I made that statement—because this road has been under construction, there were portions of this road that was constructed and trains were run over that portion of it. There were other portions that were not constructed, that is, it was partially constructed, temporary tracks were laid down but there was no hauling over

(Testimony of John Reidy.)

the other portion of the road. There were licenses that were issued which is available to the plaintiff and issued for only a portion of the road and did not extend beyond certain points.

By the COURT.—The objection is overruled; as far as the admission of this particular offer is concerned, it may be admitted for the purpose indicated by the Court.

Defendant allowed an exception to the ruling of the Court.

Mr. COBB.—And one of the purposes is to show that the Katalla Company during the year 1911 was carrying on the business of common carrier by rail and was the Railroad Company.

Mr. BORYER.—I wish to make the further objection, for the reason that the bill of lading does not purport to be a [121—86] bill of lading of the date that the accident happened to the plaintiff.

By the COURT.—What is the date of it?

Mr. COBB.—May 4, 1911.

By the COURT.—Proceed—it may be admitted.

Defendant allowed an exception.

(The bill of lading is marked Plaintiff's Exhibit "C" and read to the jury by Mr. Cobb.)

Q. You say you received a great many bills of lading of which that is a specimen? A. Yes, sir.

Q. Did you receive that bill of lading also, for goods shipped? (Hands witness paper.)

A. Yes, sir.

Mr. COBB.—We offer that in evidence also in connection with the witness' testimony.



(Testimony of John Reidy.)

Mr. BORYER.—We object to it for the reason that the receipt or paper purports to be a paper with its destination at Miles Glacier, Mile 49, and for the further reason that it bears the date of May 8. What date is that, Mr. Reidy?

The WITNESS.—May 3d.

Mr. BORYER.—For the further reason that the bill of lading shows, or the paper, that it was issued on May 3, 1911, and is irrelevant and immaterial.

Objection overruled. Defendant allowed an exception. It is admitted as Plaintiff's Exhibit "D."

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. Now, these bills of lading or papers were for the purpose of [122—87] what? I will change that question: What person gave you the papers that have been just handed to you?

A. We got them down at the depot.

Q. What person gave it to you?

A. They were handed to us by the agent at the depot.

Q. Who was the agent?

A. His name is signed to it there.

Q. Do you recall who the agent was—was it Mr. O'Toole? A. O'Toole.

Q. The goods that you were shipping were being shipped from Cordova to what point?

A. We shipped to several points along the line.

Q. Take your bills of lading and answer.

A. Miles Glacier, this one.

(Testimony of John Reidy.)

Q. Is that the destination of both the bills of lading? A. Miles Glacier; yes.

Q. What are the dates of those papers or bills of lading? A. May 4, 1911, and May 3, 1910.

Q. May 3, 1910? A. Yes, sir.

Q. That is the time you shipped the goods that are enumerated on these papers marked Plaintiff's Exhibits "C" and "D"?

Mr. COBB.—One of them is 1910 and one is 1911?

Q. That is correct, is it? A. Yes, sir.

Witness excused. [123—88]

[**Testimony of O. M. Kinney, for Plaintiff.**]

O. M. KINNEY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. O. M. Kinney.

Q. Where do you reside? A. Cordova.

Q. How long have you resided here?

A. About five years.

Q. What has been your business since you have been here? A. Grocer.

Q. Have you had occasion to ship goods out over the line of the Copper River & Northwestern Railway?

Mr. BORYER.—We object to the question as leading.

Objection overruled. Defendant allowed an exception.

A. I have.

Q. During 1910 and 1911? A. Yes, sir.

(Testimony of O. M. Kinney.)

Q. I hand you a bill of lading dated August 16, 1910, purporting to be dated Cordova, Alaska, and issued to O. M. Kinney and ask you if you ever saw that before?     A. Yes, sir.

Q. Was that issued to you?     A. Yes, sir.

Q. And the goods shipped out on the line of the road?     A. Yes, sir.

Mr. COBB.—We offer that in evidence.

Mr. BORYER.—We object to it for the reason that it is not the proper way of showing that the defendant Katalla Company was a common carrier; for the further reason that the bill [124—89] of lading shows that it was issued on the 16th day of August, 1910, and for the further reason that the goods were consigned to a point this side of the point where the accident happened.

Objection overruled. Defendant allowed an exception. It is marked Plaintiff's Exhibit "E" and admitted in evidence.

Mr. COBB.—I am going to offer this one in evidence, of the same date.

Same objection; same ruling. Defendant allowed an exception. It is marked Plaintiff's Exhibit "F" and admitted in evidence.

Q. That was issued to you, was it, in the due course of business?     A. Yes, sir.

Mr. BORYER.—I take it my exception goes to all this evidence.

By the COURT.—Yes, sir.

Q. I offer you some dated along in March, 1910, and ask you if that was issued to you?

(Testimony of O. M. Kinney.)

A. No, sir.

Q. Did you ship any goods out in 1911?

A. I think I did; yes.

Q. Did you get the same kind of bill of lading, from the Katalla Company, operating the Copper River & Northwestern Railway?

A. I don't remember now. I shipped from the time the road started. I couldn't tell you what kind of bill of lading I got.

Q. You have seen a great many of these Katalla Co. bills of lading issued here? A. Yes, sir.

Mr. COBB.—That is all. [125—90]

Cross-examination.

(By Mr. BORYER.)

Q. The dates and destination on those papers or bills of lading are the correct dates that they were issued and the places of destination?

A. I think so, yes, sir.

Q. To the best of your knowledge those are the dates? A. Yes, sir.

Q. And destination? A. Yes, sir.

Q. They were in 1910, I believe? A. Yes, sir.

Mr. BORYER.—That is all.

Witness excused. [126—91]

[**Testimony of Daniel S. Reeder, in His Own Behalf  
(Recalled).**]

DANIEL S. REEDER, the plaintiff, recalled—  
continuation of direct examination.

(By Mr. COBB.)

Q. How long had you been in there before the acci-

(Testimony of Daniel S. Reeder.)

dent, when you went over the hill to get your tools?

A. I don't think I was in there more than three or four minutes, if I was that long, because I just barely got in there, that is about all.

Q. What was the first thing that you heard indicating that there was an accident?

A. Why, I heard somebody sing out, "Look out," and I looked up and I see the cap coming down; it was nearly square over me, just a little bit back of me. I was kinder facing it, so I turned to run.

Q. And then what happened?

A. The whole roof came down and knocked the staging out from under me, and when I went down my fingers caught in the edge of the staging—if I hadn't caught on that staging, I would have been all right and not got hurt.

Q. Your fingers caught in the staging before it went down, the staging?      A. Yes, sir.

Q. I understand you were up on the staging?

A. Yes, sir.

Q. Doing this work?      A. Yes, sir.

Q. What made that cap come down, if you know, what caused the cap to come down?

A. What caused the cap to come down was, they were excavating ahead; the dirt was thawed—it is glacier muck and gravel mixed, and it ran down the sides, and as they kept digging [127—92] it out on the sides, it ran down until there was no dirt there under the segments at all and all the weight was on the cap, and it shoved the cap right down on the segment and the segment slipped down on the cap.

(Testimony of Daniel S. Reeder.)

Q. What effect did that have on the joint between the cap and the segments, when that muck ran out there? Explain that to the jury.

A. They excavated down at the bottom of these posts—it is bound to allow the dirt on the segment; this is an arch the same as you would put in masonry. It wasn't the way you put in timbers in a tunnel—this is the way you put in an arch for masonry, with an equal strain all around it. As soon as the strain was taken off of this leg, there was nothing to hold the cap on, the cap would slide right by and there was nothing to hold the cap; as soon as the strain was off, this dirt just ran outside the side, outside of the lagging and down on the track they were excavating out there.

Q. The new timbering that was being put in there to make the proper kind of a tunnel, does that indicate on Plaintiff's Exhibit "B" show the sort of timbering that should have been put in in the first instance, in order to make it safe—that is what they should have put in, what they were putting in then?

A. Yes, sir.

Q. How long had it been since you were in that particular place before?

A. I think it was something like four or five days, as near as I can remember.

Q. Now, at the time that you had been in there four or five [128—93] days before, was there anything to indicate that that was a particularly dangerous place to you? A. Nothing at that time.



(Testimony of Daniel S. Reeder.)

Q. Who told you to go to work there on this particular morning?

A. Dan Lee—that was our foreman.

Q. He was the man you took your orders from?

A. He got his orders from the engineer.

Q. He is the man you took your orders from under your employment?      A. Yes, sir.

Q. Now, I want you to tell the jury, as well as you can, how you were caught, how long you were under there, and what damage was done to your person by this fall upon you—what part of you was hurt—that is, go ahead and tell them all about what happened as near as you can tell up to the time you were taken out.

A. I am going to say I was in there, as near as I can remember now of the time, I was in there four hours and a half. We were talking afterwards and as near as I remember I was in there four hours and a half. Now, in the construction, in order to hold this up, there was a lot of braces that were put from the ends of the ties—the railroad track was through the tunnel, to about halfway up the post, on each side, to hold the posts up, where we could put mudsills under. Those were generally put in at the railroad ties or posts into timber 6 or 7 inches in diameter, just temporary braces and slightly notched. Those old timbers were round and the contract was, the boys told me, and I guess it was true, to not be less than 8 inches at the small end, and if any [129—94] man has lived in the interior and knows what the timber is in there, you know there ain't very many of

(Testimony of Daniel S. Reeder.)

them much bigger than 8 inches; to cut a small notch in the post, about half-way up; the railroad track was through the middle here; they ran the brace down here on an angle like that, to hold these timbers up while we could put mudsills in under them, and when the staging I was on fell, I went down right among these braces and I fell on one of these planks the same as this brace they are talking about, that had been in there for staging—it was a 3x12 plank. It caught me just in the—just about there, just at the lower edge of my stomach, that would be about the edge of it. This whole leg—I was lying like that—was on top of the plank and the weight of the dirt on top of that. The rest of me was free. I couldn't touch the bottom with my hands and I couldn't with the other leg—I hung there on that leg all that time, that is, until they excavated out later on. The dirt then fell down so I could get down and get my shoulder on the dirt and I laid in there until I was excavated out, and during the time there was one of the fellows started to cut this brace out, and that is when they heard me hollering out at Shorty Kilson—I don't know his other name. This Italian that was down in there so long was down pretty near under me, and he was hollering at me that he was free, if they would cut the brace out, and he started to cut the brace out and if they had cut the brace out, the whole thing was bound to settle on me, and I tried to tell Kilson not to cut the brace out, and I used some pretty strong language but I got him to stop. I finally got another [130—95] one of the boys

(Testimony of Daniel S. Reeder.)

over there and told him not to cut that brace out—if he cut that brace out I was a goner—and he said to get some pieces of board, about three feet long, to put over my head, so as to keep the dirt out; my head was full of dirt for months after that, after I got out of the hospital I took dirt out of my ears. At any rate, I laid in there all that time until I was taken out. There was quite a while I was in there—I don't remember—I must have went to sleep, because I don't remember—I talked with Lew Smith awhile and then I knew of Tom Cloninger coming in there. The first I remember of him being in there was when he attempted—they had to lift my leg—they had to cut this board in two that my leg was on top of—they had to saw it in two underneath me, in order to pull me out. I come to just about that time and recognized Cloninger's voice, and that is the first I had recognized, I suppose, for a couple of hours, because I know that I was free then with my leg when I came to, but I don't know what did happen during the rest of the time.

Q. Now, I want you to tell the jury what damages were done to you, what injuries to your leg and what injuries you have sustained.

A. All I know about my leg is this—I have been told by good authority that my leg was examined when I was under the influence of chloroform in the hospital and found to be in pretty bad shape—

Mr. BORYER.—I object to that.

By the COURT.—State what you know.

A. This was from a man that was right there and

(Testimony of Daniel S. Reeder.)

saw the whole thing. [131—96]

Q. Was it from the physicians?

A. No, it was not from a physician. At any rate, they put my leg in a box that was on hinges, with a pulley under it, that comes right up to there, and strapped it in there for three months and a half. I don't think it was ever taken out of that more than once, if it was taken out then, and my foot was held perfectly straight. Now, if there was nothing the matter with my leg it is a question what they put it in a box for.

Q. Who did that? A. Doctor Smith.

Q. He was the company's doctor?

A. He was the company's doctor at that time.

Q. Any other part of you injured?

A. Yes, I was operated on right above the penis.

Q. For injuries to the pelvic bone?

A. My pelvic bone was broken. They had taken a picture of me, I think, on the 24th or 25th of August—I have the dates in my pocket here, if you will allow me to get them. I have them here somewheres. (Referring to book.) X-ray pictures were taken of me on the 24th and I was operated on the 25th day of August. Now, I laid there—I came down there on the 13th of August and laid there until the 24th before there was even a picture taken of me; they then took a picture of me.

Q. You mean an X-ray picture?

A. I mean an X-ray picture of me; yes. Under the X-ray picture they ciphered out, so they claimed, that my pelvis was broken, so I was put under the

(Testimony of Daniel S. Reeder.)

influence of ether and they operated on me. Well, it is always a question in my mind [132—97] why it was I laid there from the 13th to the 24th before I was operated on. Now, I must have been in bad shape because I weighed 210 pounds or 212, I think it was—just a day or two before—I was in the depot and weighed—when I got hurt and was working every day, but there is one time there that I don't believe I would have weighed over 125 pounds. They fed me on one glass of milk and a little tea for thirty-five days, so I must have been in pretty bad shape.

Q. That has happened more than eighteen months ago? A. Yes, sir.

Q. Is there anything in your experience during that time that indicates that the injury to the pelvic bone is permanent? If so, state to the jury what it is.

Mr. BORYER.—We object as leading.

By the COURT.—It is leading, but it is drawing his attention to something that probably could not be alleged in any other way—it might be done, perhaps.

Mr. COBB.—I will try to put it in another way.

Q. Is there anything in your general health or your experience in every-day life now, in the way of bodily suffering or otherwise, that indicates that the injury sustained by this pelvic bone is not yet over with?

A. Yes, sir.

Q. Tell the jury what that is.

A. Well, I haven't ate a beefsteak in a year—I can't eat any hard food at all. I have to eat some-



(Testimony of Daniel S. Reeder.)

thing that will go through my stomach and is very easily digested. When I was caught, I was caught right there (indicating), the lower [133—98] part of my stomach, and that is where all the trouble has been, with my stomach, since. I had to have the doctor, I think, about three times in the last year on account of it.

Q. Did you have any trouble of that kind before this accident?

A. No, sir; I could eat anything before that happened.

Q. Now, Mr. Reeder, how has your leg been up to the present time, since that accident, the use of it—how long before you could walk around at all?

A. I don't remember. I came out of the hospital on the 6th day of December.

Q. 1911?

A. Yes, sir. I went around on crutches quite a while and then used a cane for a long while. Of course I am able to travel now, I can walk pretty fair on the level, but when it comes to going up or down hill, my hip bothers me and my legs—any man can see the size of it; it is swelled. It is not so bad in the morning. If I want to put on my gum boots during the day I have to put them on in the morning, for the simple reason that I can't get my legs in them, into the gum boot, if I don't put them on in the morning, because it swells in the day and it seems I want a number 8 gum boot, the first gum boots I ever wore in my life bigger than a number 7, and I have the tops pulled off of them now trying to get my legs into



(Testimony of Daniel S. Reeder.)

them; and I am a little bit hard of hearing in one of my ears. We had two different doctors there that I notified I had dirt in my ears, and after I got in the hospital, about three or four weeks, I got a piece of log about the size of a pea, an ordinary pea, out of my left ear, that had worked out at that time.

[134—99]

Q. Has all of this trouble given you any suffering?

A. It certainly has. I have had Doctor Chase, I think, three different times in the last year on account of my stomach.

Q. On account of this bowel trouble you speak of?

A. Yes, sir.

Q. What were you earning at your trade at the time that this accident happened?

A. Well, I was getting 50 cts. an hour. Now, it is a question—I don't remember whether we were working eleven hours,—which I am pretty positive we were,—going to work at half-past 6 and working eleven hours a day. If it was, I was getting \$5.50, but I am not going to swear to it positively.

Q. The defendant paid you at the rate of \$150 for four months?

A. I believe they paid me at the rate of \$5 a day.

Q. For four months?

A. If a month had 31 days in it I got \$155.

Q. Five dollars a day for four months?

A. They paid me from the 7th day of August until the first day of December—they paid me the balance of August and September and October and November. Mr. Hawkins told me that he would pay my

(Testimony of Daniel S. Reeder.)

wages until such time as I was able to go to work at my trade again.

Q. And they paid it up to the first of December, 1911?     A. Yes, sir.

Q. Have they ever paid you anything since?

A. No, sir.

Whereupon court adjourned until to-morrow (Friday), April 25, 1913, at 10 o'clock A. M. [135—100]

Friday April 25, 1913.

MORNING SESSION.

Continuation of the direct examination of the plaintiff—DANIEL S. REEDER.

(By Mr. COBB.)

Q. Since you got out of the hospital have you been able to work at your trade?     A. No, sir.

Q. Have you been able to earn anything?

A. Why, I earn a little around town.

Q. What sort of work is it you can do?

A. I am doing janitor work—three different places here in town.

Q. About how much can you earn at that per month or a day?

A. For the three jobs I am getting \$35 a month.

Q. Is that about all the kind of work you are able to do?

A. Once in a while I get other light jobs I can do—I can make a little on the side.

Q. How long since you have been able to do that class of work—how long or for what length of time were you not able to do anything?

(Testimony of Daniel S. Reeder.)

A. I think I commenced doing janitor work along some time last June, if I remember right.

Q. Prior to that time were you able to do anything at all? A. No, sir, I was not.

Q. On Saturday—I think the jury understood it but I want it correctly—describing the conditions while you were lying there hung by your leg, you said you went to sleep. What did you mean by that—that you went off into a natural sleep or that you fainted?

A. I don't think I went off in a natural sleep—I don't remember anything, that is all. [136—101]

Q. You lost consciousness? A. Yes, sir.

Mr. COBB.—That will be all.

Cross-examination.

(By Mr. BORYER.)

Q. How long have you resided in and around Cordova?

A. I think I came here in February, 1908.

Q. Where did you live?

A. I lived for a while where the Arctic Lumber Company used to have their little shack there, beyond where the Red Dragon is now.

Q. When did you first begin working for the company?

A. I commenced for the Railroad Co. I commenced in August, 1910—I think it was August, somewhere about that time.

Q. In August, 1910—you began working for the Katalla Company at that time? A. Yes, sir.

Q. What did you do prior to that?

A. I worked around town here first and I had a

(Testimony of Daniel S. Reeder.)

contract here from the Townsite Co. clearing some of the streets, and then I was in on some grading jobs, grading lots in the town here, two different lots I was in on grading, and the balance of the time I put in working for the Arctic Lumber Co.

Q. You began working for the Katalla Company in 1910? What work were you doing for them?

Mr. COBB.—I object to that. He said he began working for the Railroad Co. and the counsel now says the Katalla Co. If he says it is the same thing, all right.

Q. From whom did you get your checks, by whom were they signed?

A. Which checks? [137—102]

Q. While you were working, doing the work that you say you were doing? A. In 1910?

Q. Yes.

A. I got them from—I think it was Robertson was paymaster for the company.

Q. By whom were they signed?

A. I don't know.

Q. Did you ever examine the checks?

A. Well, I didn't keep them long enough to examine them very much.

Q. By whom were they signed, at the time you were injured?

A. I don't know who they were signed by—I know it was from the paymaster I got them. I got them from the paymaster, that is all I know about it.

Q. You don't know by whom they were signed?

A. No, sir; I suppose Mr. Hawkins' name is on

(Testimony of Daniel S. Reeder.)

them but I don't know who else.

Q. Then you don't know by whom they were signed, that is, you don't recall?

A. I don't recall; no, sir.

Q. I believe your accident happened some time in August, 1911? A. Yes, sir.

Q. August 7, 1911?

A. Yes, sir. I have got two checks for August, 1911, one of them for \$37.50, I think, and the other for \$5.00 a day for the balance of the month, from the 7th day of August.

Q. I hand you a paper in the shape of a check, having thereon Check #394, number of check being #A114003, under date of [138—103] August 14, 1911, and ask you if that is the check that you received for your wages during the month of August, 1911.

A. That is the July pay check—this is the pay check for July.

Q. For what amount? A. \$114.80.

Q. By whom is that signed?

A. It is signed by Davis.

Q. Read the signature.

A. E. J. Davis, Cashier.

Q. What is above E. J. Davis' name?

A. I don't understand what you mean by what is above—the whole check is above Katalla Company—is that what you want to find out?

Q. Yes. A. That is on three or four places.

Q. Do you see on this check Copper River & Northwestern Railway Company anywhere?

(Testimony of Daniel S. Reeder.)

A. No, sir.

Q. I will ask you if you received that check for your wages during the month of July, 1911.

A. Yes, sir.

Q. I will ask you if you cashed that check and endorsed it?

A. My name is on it, I guess; I must have.

Q. Did you do it?     A. Yes, sir.

Q. That is your signature on there, is it?

A. I think my wife signed that. I think I gave that to my wife. I think that is my wife's signature—that is her writing, not my own.

Q. But with your consent?

A. Yes, it certainly was. [139—104]

Mr. BORYER.—We offer that in evidence.

Mr. COBB.—I don't think I have any objection.

(It is admitted in evidence and marked Defendants' Exhibit 1.)

Mr. COBB.—I have no objection to all of those checks going in as one exhibit.

Mr. BORYER.—I want to question the plaintiff regarding the checks.

Mr. COBB.—My only purpose was to save time.

Q. I hand you check #A120076, under date of September 11, 1911, and ask you if you received that check for your wages during the month of—for work done by you during the month of August, 1911.

A. Yes, sir, that was the first—I should have had pay for seven days and I was a little short-changed on it—I should have had seven days' pay at \$5.50 a day but I was a little short-changed.



(Testimony of Daniel S. Reeder.)

Q. It is for \$35.50?

A. I was a little short-changed on the proposition.

Q. What do you mean by short-changed?

A. I should have had pay for seven days at \$5.50 a day.

Q. Instead of that you were paid for what?

A. I got \$35.50—it don't make any difference, it is gone now. I accepted the check and cashed it and it don't amount to anything.

Q. That check was for your pay up to the time you were injured?     A. Yes, sir.

Q. And you were injured on the 7th?

A. Yes, sir.

Q. And you were getting how much a day?

A. \$5.50 a day. [140—105]

Q. How much would that make then?

A. \$37.50.

Q. And the check was for—\$35.50?     A. Yes, sir.

Q. Now, you say you were a little short-changed?

A. Yes, sir.

Q. Did you take it up with the company?

A. No, sir.

Q. Did you say anything to the company about it?

A. No.

Q. Do you know whether the company knows that they short-changed you or not, if they did?

A. I do not.

Q. And you never said anything to them?

A. No, sir.

Q. Then you didn't say a word to them in regard to it?     A. No, sir.

(Testimony of Daniel S. Reeder.)

Q. I will ask you by whom that check was signed?

A. It is signed by Mr. Davis.

Q. Whose signature is above Davis' name.

A. Printed or written?

Q. Printed.

A. The Katalla Company's name is on there.

Mr. BORYER.—I offer this in evidence.

(It is admitted and marked Defendants' Exhibit 2.)

Q. That was for the days you worked during the month of August?

A. That was before I got hurt; yes.

Q. I hand you a check #A103036 under date of July 11, 1911, for \$103.45 and ask you what that pay check was for. [141—106]

A. This is the June pay check—this I got when I was at Kuskolina bridge; this is for June.

Q. By whom is that signed?

A. Signed by Davis.

Q. Whose signature is above Davis'?

A. The same as the other check, Katalla Company.

Q. Davis signs it as cashier, does he not?

A. Yes, sir.

Q. And signs under the signature Katalla Company; is that correct? A. Yes, sir.

(The check is offered in evidence and admitted, without objection, and marked Defendants' Exhibit

3.)

Q. Now, then, during the month of July, 1911—your pay check for June was \$103.45, was it not?

A. It is on the check there, whatever it was. I be-

(Testimony of Daniel S. Reeder.)

lieve that is it, yes—that's the June check.

Q. Your pay check #A114003 under date of August was your time for July, was it not?

A. Yes, sir.

Q. \$114.80, was it not?      A. Yes, sir.

Q. Was that about the usual amount that you drew down each month?

A. That depended on whether I was working steady or not—I got laid off them months.

Q. During June and July you drew down, in June \$103.45, and in July you drew down \$114.80, did you not?      A. I lost part of each month.

Q. Now, then, I hand you draft #16604, dated October 11, 1911 [142—107] and designated as Defendants' Exhibit 4 and ask you what that is.

A. This is the pay for the balance of August, \$120. Mr. Hawkins agreed to pay the balance of my wages for the time—agreed to pay my wages for the balance of the time I was in the hospital and those are the wages he set himself—I said nothing to him about the wages at all,—he set those wages himself.

Q. Then the other check that I handed you for \$35.50 was for the time you worked in August, was it not?      A. Yes, sir.

Q. This check for \$120 is time that was allowed you while you were in the hospital, was it not?

A. Yes, sir.

Q. So if you were short-changed a couple of dollars it was made up in this \$120, was it not?

A. No, sir.

Q. You still think you were short-changed—but

(Testimony of Daniel S. Reeder.)

they did give you \$120 for your time?

A. While I was in the hospital.

Q. From the date that you were injured until the end of that month of August? A. Yes, sir.

Q. And this is the draft that they gave you?

A. Yes, sir.

Q. I will ask you by whom that draft is signed?

A. It is signed by Mr. Hawkins up here, E. C. Hawkins and E. E. Spurgee.

Q. I ask you to examine the check at the usual place of signature for checks and ask you by whom it is signed at that place. [143—108]

A. E. J. Davis, Cashier.

Q. Whose signature is above that?

A. Katalla Company.

Q. You received that check, did you not?

A. Yes, sir—I think my name is on it.

Q. Now, then, I hand you draft #16676, under date of November 15, 1911, and ask you what that was for. (It is marked Defendants' Exhibit #5.)

A. This is the allowance for October. This is the second check I got, \$155. I got August; then I got October; then I got September and November. I got the October check my second check.

Q. Was that for time while you were in the hospital? A. Yes, sir.

Q. What is the amount of that check? A. \$155.

Q. And that was for what month?

A. The month of October.

Q. That was a month you were in the hospital?

A. One of them; yes.

(Testimony of Daniel S. Reeder.)

Q. I will ask you by whom that check was signed.

A. The same company.

Q. By the Katalla Company? A. Yes, sir.

Q. And by E. J. Davis, Cashier? A. Yes, sir.

Q. Then during the month of August, 1911, the company paid you \$35.50 and \$120, a total of \$155.50—is that correct? A. Yes, sir.

Q. You were in the company hospital during that month, were [144—109] you not?

A. I was there from the 7th of August, yes, sir.

Q. From and after your injury? A. Yes.

Q. They bore all of your expenses while in the hospital, did they not? A. Yes, sir.

Q. As a matter of fact, you paid the company \$1.50 a month for medical attention and board—I mean medical attention and hospital fees?

A. Yes, sir.

Q. And during the month of October you were paid at the same rate, were you not?

A. \$5 a day; yes.

Q. During the month of October? A. Yes, sir.

Q. During the month of November?

A. I was paid \$5 a day.

Q. When did you leave the hospital?

A. I left it on the 6th day of December.

Q. I will ask you if you were paid for your time in the hospital during November. A. Yes, sir.

Q. These checks were all signed by the Katalla Company, were they not?

A. Those I have examined now were, yes—I don't know what the others were.

(Testimony of Daniel S. Reeder.)

Q. Do you know that you received any checks that were signed by anybody else?

A. I don't know what September and November were; I wouldn't [145—110] swear to it. I presume they were the same as the others. I don't know that,—I wouldn't swear to that part of it.

Q. Now, then, I think you testified yesterday that you had had a conversation with Mr. Hawkins, wherein he had agreed to pay you during the time that you were in the hospital. A. Yes, sir.

Q. That was at the close of the testimony yesterday and I didn't catch it all—what was that you said?

A. I said Mr. Hawkins, when he was leaving, came into the hospital to bid us all goodbye, so I had a talk with him and I asked him how it would be about my receiving my pay after he left, and he said, "I fixed that all up, Reeder; you will have no trouble; you will get your pay until you are able to go to work again, and then we will put you to work." He said, "I have fixed that up and you need not worry about it."

Q. And what did you say to him?

A. I just thanked him for his kindness.

Q. Had you said anything to Mr. Hawkins about starting a suit?

A. No, sir, never thought of such a thing.

Q. You had assured Mr. Hawkins that you would not?

A. No, sir; such a thing never was mentioned about any suit—that was never mentioned between I and Hawkins.

Q. Was it ever mentioned to anyone?



(Testimony of Daniel S. Reeder.)

A. I think I mentioned it once to you, that if you had paid me as Hawkins agreed that we would never have had any trouble.

Q. Was that voluntary on your part or was it because I had said something to you?

A. We were talking about this Hook Jackson case—he had just [146—111] sued the company, I know, before that and I don't remember the conversation exactly; at any rate, I was over in your office and we were talking and I said as long as you paid me what Hawkins agreed to that I never would bother about any suit.

Q. You were paid up to the time that you left the hospital, were you not?     A. No, sir.

Q. You left the hospital December 6th, did you not?     A. Yes, sir.

Q. You were paid for the full month of November, were you not?     A. Yes, sir.

Q. Then you were not paid for the six days in December you mean?     A. No, sir.

Q. You were not paid for them?     A. No.

Q. Did you ever ask any one for it?

A. Yes, sir.

Q. Whom did you ask?

A. I asked you—I asked Mr. Geiger, the superintendent, too.

Q. What did I tell you?

A. You said that you would fix it up the first time; the next time you told me that you were more interested in getting me a job watching than you were getting my check for me, and the next time you told me

(Testimony of Daniel S. Reeder.)

that you would try to raise me \$20—that was when I got that pass to go to Juneau.

Q. What was your object in going to Juneau?

A. I went up there to sell that cabin, and I wanted to see some other parties up there and take a look around.

Q. As a matter of fact, didn't you want a watchman's job there at Camp 1 and weren't we trying to arrange so as to get you [147—112] a watchman's job at Camp 1?

A. No, sir, I didn't want another job.

Q. You didn't want any job?

A. No, sir; not at that time; that was less than two months after I got out of the hospital and you objected to my leaving the hospital when I left it, and it was less than two months, only a month and a half after I came out on crutches—I don't think I would want a watchman's job at Camp 1.

Q. Why did I object to your leaving the hospital?

A. As near as I could find out you were afraid I would come over here and start a suit.

Q. You hadn't said anything about starting a suit?

A. No, sir.

Q. You had at all times stated that you were not going to start any suit and was telling me about another young man that was in the hospital that you thought was going to start a suit, were you not?

A. Not at that time—you never said anything to me about any suit. Any conversation you and I had was long after I left the hospital.

Q. Now, I will ask you if you ever said anything

(Testimony of Daniel S. Reeder.)

to me or ever said anything to any one of the company about starting suit in this action at all.

A. I never said anything to you; no.

Q. Never said anything to anybody else about starting suit, did you?

A. I don't know that I ever did, with any of the company officials.

Q. Never did? [148—113] A. No.

Q. Then you started this suit without ever taking it up with the company in any way, shape or form?

A. I took it up to try to get my pay and couldn't.

Q. Didn't you say anything to any one of the company about this starting this suit, or that you were dissatisfied?

A. I told you that I wanted to try to get my pay time and time again.

Q. And I was doing what I could to get your pay for you.

A. Your story and Mr. Geiger's didn't jibe there—Mr. Geiger told me plainly that any time that the legal department asked for my pay they could get it.

Q. Then those matters are turned over to the legal department, are they not?

A. Yes, sir—Mr. Geiger said it was all with the legal department.

Q. Now, then, did you ever notify me that you were dissatisfied and that you thought of starting suit against the company?

A. I don't know that I told you I was going to start any suit—a man when he makes from two to

(Testimony of Daniel S. Reeder.)

four trips to get a check I think he is pretty near dissatisfied.

Q. You never intimated that you were going to start or thought of starting suit, did you?

By the COURT.—I think that is sufficient. He has answered that.

Q. Now, then, after beginning work for the company in 1910, how long did you work for the company?

A. I commenced, I think, somewhere about the 16th of August—I am not positive of the date but I know the date we finished up. [149—114]

Q. August, 1910, you mean?

A. Yes—we ran up to—that is, we laid the boat up at Miles Glacier on the first day of November. The last trip we crossed Miles Glacier was about nigh on to the last day of October.

Q. And you worked for the company from that time up to the time you were injured?

A. No, sir.

Q. Off and on?

A. I went to work in the following May.

Q. Practically all the work you did from the time you began working for the company up to the time of your injury was for the company, was it not?

A. I worked here at carpenter work all that winter of 1910 and the spring of 1911.

Q. Carpenter work? A. Around town here.

Q. For whom were you working?

A. I helped when they put the third-story on the Rainier Grand Hotel. I helped when they put the

(Testimony of Daniel S. Reeder.)

second story on the Merchants' Cafe down here, Slater's building, and I was working on that, in fact, when Captain Hill came in here, and I hired out to go as pilot on one of the boats in the summer of 1911. I was working at Slater's building at that time.

Q. As ordinary helper or carpenter work?

A. I was carpenter's helper.

Q. How long did you work at that?

A. I don't know, I don't remember anything about that. I went to work there and worked until it was about completed, and then Captain Hill came in and I got a job and I quit that [150—115] then.

Q. What wages were you receiving at the time you were working for the company as a carpenter?

A. The Railroad Company, you mean, or the Katalla Company, or which ever company it is?

Q. Yes.

A. I received 45 cents an hour the greater portion of the time; the only time I ever received 50 cents an hour was in the Chitina tunnel—that was just before I got hurt, when I was working under McFarland.

Q. You received 45 cents an hour at all times prior to working in the tunnel?      A. Yes, sir.

Q. That is the regular carpenter wages on the outside?      A. I don't know that part of it.

Q. You received the same wages as the other carpenters on the outside?

A. I was receiving the same wages as the men that I was working with there, and that was the reason I got raised to 50 cts. an hour—Mac's gang came and

(Testimony of Daniel S. Reeder.)

they were all getting 50 cts. an hour, and I went to Mac and told him I had been working for 45 cts. and I was working with his men, and he said it was nothing more than right I should get the same wages as the rest of his men were getting.

Q. Did you think you were as competent as the other men?

A. I certainly was—I was doing the same work.

Q. And then when you joined the tunnel gang, you were allowed five cents an hour extra?

A. That is when I joined McFarland's gang. I had worked in that tunnel before and I only got 45 cts. before. [151—116]

Q. But McFarland's gang was getting 50 cts. a hour? A. Yes, sir.

Q. The other carpenters were getting 45 cts. an hour? A. Yes, sir.

Q. That were working on the outside?

A. No, there was other men working inside of it when I worked there before.

Q. How about the time you were working there this time?

A. I was working up to the time that Mac came there. I was getting 45 cts., but when we went to work for McFarland, I got 50 cts.

Q. Were there any other carpenters there getting 45 cts. an hour? A. Yes.

Q. Working in the tunnel?

A. Men working with me, Billy Wilds.

Q. Why were you allowed 50 cts. and he allowed only 45?



(Testimony of Daniel S. Reeder.)

A. He got raised the same time I did. I made the kick and we both got a raise at the same time.

Q. You felt that you were entitled to the raise?

A. I thought that I was entitled to the same wages as the rest of the men.

Q. Just as good a mechanic as the others?

A. There might have been some men there better mechanics than I was, but I think I was doing the work just as good as the greater portion of them there.

Q. When did you begin your first work on this tunnel?

A. The first work on that tunnel I think commenced in April.

Q. That is, you did your first work?

A. Yes, I think it was April. [152—117]

Q. What time in April?

A. I couldn't tell you that, anything about that, and it might have been May, I wouldn't say, but it seems to me it was April, because we started in early in order to do the work we wanted to do, have it done before the thaw come, while it was still froze.

Q. Some time in April or May, 1911?

A. Yes.

Q. What work did you start in to do?

A. I and Lew Smith was doing the frame-work.

Q. The framing of what?

A. The framing of the timbers at the bents that were to go in—we were putting in timbers, retimbering.

Q. Only two of you working there?

(Testimony of Daniel S. Reeder.)

A. There was only two of us framing at that time.

Q. Were you working in the tunnel or out of the tunnel?

A. We were in the tunnel part of the time; we were out where we were framing part of the time—we had to go in and get out our patterns, that is our measurements.

Q. What do you mean by framing?

A. Getting your timbers the length you want them to go into the tunnel—whatever length you want the cap and segment and your post.

Q. Then you were making the timbers that were to be used in the tunnel?     A. Yes.

Q. Where would you make these timbers?

A. I think we framed all of ours on the Chitina end of the tunnel, right out just this end of the open cut—right along side of the engine house,—that was in the spring. [153—118]

Q. That is the Chitina end of the tunnel?

A. Yes, sir.

Q. You say in the spring you did this?

A. Yes, sir.

Q. What time in the spring?

A. Whenever we went to work there, along in April or May, and we work there until sometime in June.

Q. That is the time you have reference to?

A. Yes.

Q. How long were you working there framing these timbers, making these frames?

A. I worked there until we finished up that job

(Testimony of Daniel S. Reeder.)

in there,—I don't know, I think it was some time in June, about the first of June, if I remember right, I went to Kuskolina Bridge—after we got through there we went to the Kuskolina Bridge.

Q. In framing these timbers or making these timbers what did it necessitate you doing, in order to make these frames?

A. Well, the engineer started in to give us the cuts and lengths short and we spoiled three or four thousand feet of 12x12 timbers, and the engineer at that time concluded it was better for us to go and take the patterns ourselves, so we went in and every time we made a set of timbers—the tunnel had settled and there was no two sets of timbers alike and you had a take a templet and go in there and get the difference, every one was different, and get your measurements all separate and go out and frame a set of timbers according to your measurements and that was what we were doing—every time we cut a set of timbers we had to go in and get the measurements for the next one. [154—119]

Q. Then you were putting in bents or timbers—for what purpose?

A. To reinforce the tunnel.

Q. What do you mean, to reinforce?

A. Make it stronger.

Q. Then you didn't follow the instructions of the engineer as to the measurements, etc.?

A. The engineer, after he gave us four different figures on Number 8 bents, and there wasn't one of them that came within six inches of fitting, told us

(Testimony of Daniel S. Reeder.)

it was cheaper for us to go and get the measurements than it was for him to make the mistakes and for us to find that out afterwards.

Q. What engineer was that?

A. That was Mr. Price.

Q. Then you went in there and measured this tunnel for the purpose of getting the right length of bents and daps and caps and segments for the reinforcement of this tunnel? A. Yes, sir.

Q. Now, what portion of the tunnel were you reinforcing?

A. I think that we reinforced, I think, twelve bents on the Kennecott or further end of the tunnel from here—I think there were twelve bents, if I remember right and we either put in 6 or 8 bents on the Chitina end of the tunnel. They were afraid of the ends of the tunnel coming down. The first talk was, Mr. Price said that they figured on retimbering it clear through and then they concluded they would not do that, they would put in 12 or 16 bents on each end—so we got twelve bents in on the further end, that is the Kennecott end. We started in on—first I think we put in something like twelve bents—they are there yet to show if [155—120] they haven't been torn out since I got hurt; and then we came to the Chitina end and we had six bents; O'Neill had excavated under four bents on each side when the orders come that we wouldn't put in any more, that is, he had excavated out alongside of the mudsill, he hadn't got the mudsills out.

Q. After you had framed these bents and made

(Testimony of Daniel S. Reeder.)

the bents, did you help to put them in?

A. Yes, sir.

Q. Who was with you, if anyone, besides this one man that you spoke of, in helping to make these bents?

A. Well, the foreman was there part of the time, Hugo Fells, and toward the last old man Elliott was around there and he was generally doing the marking.

Q. Then the three of you made those bents?

A. Well, sometimes there were three, sometimes there was only two and sometimes there was four of us; it depended on how the work happened to come; there might be four of us out there or five or there might be only two and sometimes it might be all hands were in the tunnel—we only had a small crew in the tunnel and it took all hands as a rule when we went to raise.

Q. That was the beginning of the reinforcing of that tunnel?     A. Yes, sir.

Q. In April, 1911?     A. Yes.

Q. And you began to reinforce the tunnel from the Kennecott end towards Chitina,—is that correct?

A. Yes, sir.

Q. And you had reinforced that tunnel from the Kennecott end [156—121] up to within four bents of where there had been a former cave-in?

A. No, sir, there had been no cave-in in the spring at all—there was no cave-in. The first cave-in came in there sometime about the tenth day of July, tenth or fifteenth, just before I went to work. I got laid

(Testimony of Daniel S. Reeder.)

off on the Kuskelina bridge, I think, the 6th or 7th of July, and I was down home and walked through that tunnel when I came home—there had been no cave-in up to that time, and I was over at the tunnel and saw it after it broke down first and it was some time before I went to work—I think it was the 16th day of July that I went to work.

Q. Then the first cave-in happened while you were working on the tunnel, did it?

A. No, sir; I was not working for the company when the first cave-in happened.

Q. It was just before you went to work in the tunnel?     A. Yes, sir.

Q. And just before you began making this framework, doing this reinforcement work?

A. I didn't do any framing when I went to work the last time.

Q. I mean the first time.

A. There was no cave-in the first time.

Q. There had been no cave-in prior to your starting the work in April?

A. No, there was no cave-in then.

Q. Was there a cave-in between April and June?

A. No, sir.

Q. When was that first cave-in? [157—122]

A. I just told you a minute ago. I said it was some time, I thought, about the tenth day of June, July, I mean.

Q. About the tenth day of July?

A. Yes, sir, it was some time in July, but it was after the fourth day of July. I am positive of that



(Testimony of Daniel S. Reeder.)

because I was working at Kuskolina bridge on the 4th of July and got laid off about the 5th or 6th.

Q. Then after you left there in June, there was a cave-in at the Chitina end of the tunnel, was there?

A. Not in the tunnel.

Q. At the edge of the tunnel, was it?

A. There was no cave-in from the time I left there until I went to work in the tunnel, until some time about the 10th of July there was a cave-in in the tunnel.

Q. Where were you working on the tenth of July?

A. I was not working on the tenth of July, I said.

Q. Then there was a cave-in on or about the tenth day of July?

A. Yes, sir—that was the first cave-in in the tunnel—it was about the tenth day of July.

Q. Then where were you working at that time?

A. The tenth day of July?

Q. Yes, about that time?

A. I was not working at all.

Q. Where were you staying?

A. At home.

Q. Where was your home?

A. I had a cabin on the Government ground, Chitina Heights, they call them.

Q. You knew of the cave-in? [158—123]

A. Yes, I saw it about half an hour after it happened, or less,—happened to be coming from town and when I went by the end of the tunnel I could see it.

Q. Then you began work there the next time, when?

(Testimony of Daniel S. Reeder.)

A. I think about the 16th of July. I know it was right after this first cave-in, right after the first cave-in I went to work. I and Billy Wilds were working there on the further end of the tunnel, making flume-boxes.

Q. For what purpose?

A. They were going to put in a pump there and try to hydraulic this muck out, to sluice it out.

Q. That had fallen down in July? A. Yes, sir.

Q. Then what was your next employment?

A. I worked there until—

Q. How long did you continue at that work of making sluice-boxes?

A. I couldn't just recall the time. I know we worked there making sluice-boxes—I don't know whether it was Mr. Forrester came to us then or Mr. O'Neill and wanted us to go in and brace up the tunnel. He was afraid a lot more of it was going down and we went and was using 3x12, I think, it was plank and bracing up the posts, about 8 ft. high on each post, right across from one bent, from one side to the other, right straight across, and we were putting in plank, I think, to keep them from sagging over; in case of heavy strain the posts, on account of too heavy a weight settling on the top down on the post, was bringing them in in the middle—they were all starting to come in.

Q. Explain to the jury what you mean by coming in at the middle. [159—124] You mean they were giving in the middle?

A. Yes, sir. The heavy weight on the top of the

(Testimony of Daniel S. Reeder.)

tunnel here on these posts, they began to sag in at the middle here, give right in. This is a glacier muck and gravel and it will ravel, it works down here and forces the middle posts in and we were bracing it across, the same as that brace is across there, to keep them from coming in; we were bracing those planks so they wouldn't spring sideways in case of a heavy strain.

Q. Who was instructing you to do this work?

A. I think Mr. Forrester there; I am not positive. That was before McFarland came there.

Q. How is that?

A. I think Mr. Forrester instructed us to do that; I am not positive. I think it was before Mr. Mac and his timber gang came to the tunnel.

Q. What kind of posts were those?

A. Those were a native spruce lumber.

Q. And by giving you mean they were bending in the middle?

A. Bending and springing in the middle.

Q. On account of the weight that was pushing down on them?     A. Yes, sir.

Q. Did you brace all of the timbers or posts that you saw there that needed attention?

A. We didn't get them all braced before there was another cave-in.

Q. But you were bracing them?

A. Yes, sir, we were bracing them and they caved in again.

Q. And it was during the progress of this bracing that the cave-in came,—before you got it completed?

(Testimony of Daniel S. Reeder.)

A. Yes, sir.

Q. Was the other workman with you a carpenter?

A. Billy Wilds was and the rest of them,—we had some of O'Neil's men that were working in the mucking gang, what was known as the mucking gang—he sent, I think, four men in to help us. Billy Wilds and I were the only two of the carpenter gang that was there then.

Q. And you had charge of doing that work?

A. Yes, I and Wilds together.

Q. Now, then, did you ever see the tunnel after your injury?

A. I have never been in that tunnel since I was packed out of it.

Q. And when you came out of the tunnel you were in an unconscious condition?

A. No, I had come to—I was conscious about the time they fetched me out of there.

Q. Did you pay any attention as to the timbers at the time?      A. No, not a thing.

Q. And you haven't seen the tunnel since that time?

A. Not only at a distance. I have walked past, right there at this end of the open cut—that is the nearest I have been to the tunnel.

Q. Now, when you stated that the segments were attached to the cap in the manner in which you stated it was attached—as a matter of fact, you hadn't seen the manner in which those caps were fastened after you were injured, had you?

A. No, not after I was injured, no—I seen them

(Testimony of Daniel S. Reeder.)

before a good many times.

Q. Not so often, had you? [161—126]

A. I helped brace up these sets that were coming down before that—before we could get the new timbers in. Two sets were coming down exactly the way those were falling.

Q. You hadn't noticed them particularly, had you?

A. Hadn't? Well, a man would come pretty near, working under them.

Q. And are you certain now that you saw how they were put together? A. I certainly am.

Q. Have you examined them?

A. I certainly have. I helped take out, I think, two or three sets at the further end of that tunnel in the spring and had to take them out entirely and put in new timbers in the place of them, because they had reinforced it at the further end of the tunnel, so we had to take out either two or three sets in order to get our new timbers in.

Q. As a matter of fact, now, you didn't consider that that was a dangerous way to put those together, did you?

A. I didn't think it was much of a way to frame timbers for a tunnel; they had men there that had forty years' experience in railroad tunneling said they never saw a set of timbers framed like that in a railroad tunnel in their life.

Q. Did they tell you this?

A. Yes, sir; that is old man Elliott, if you want to know the gentleman.

Q. Did you agree with him?

(Testimony of Daniel S. Reeder.)

A. I didn't know much about it, but I didn't think that was a proper way to frame timbers for a tunnel.

Mr. COBB.—I want to withdraw this witness a moment and put Mrs. Reeder on the stand. [162—127]

[**Testimony of Mrs. Daniel S. Reeder, for Plaintiff.**]

Mrs. DANIEL S. REEDER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Mrs. Reeder.

Q. What relation are you to the plaintiff, Daniel S. Reeder? A. He is my husband.

Q. How long have you been married?

A. Well, I think about two years. We were married about the 18th day of May.

Q. 1911? A. Yes, sir.

Q. What was the condition of Mr. Reeder's health at that time.

A. He was in very good health at the time he was hurt in the tunnel.

Q. Now, I want you to tell the jury what time it was, about, when he was brought home to you from the hospital?

A. He was brought home to me on the 6th day of December.

Q. Now, I want you to tell the jury what was his condition at that time and what indications there have been of his suffering from that time on.

A. He never has been the same man since that



(Testimony of Mrs. Daniel S. Reeder.)

very day he went into the tunnel. When he went into the tunnel he was a perfectly healthy man, and ever since he came out of the tunnel he has suffered something fierce, and several times he had the doctor. The last time he was sick pretty near two days, and I had to go down and get somebody else to do his work.

Q. What was his complaint—what did he complain of? [163—128]

A. It seemed like when any heavy food passes through his bowels it pains him severe—right in through here is where it pains him, and the pain is so severe that the doctor had to inject morphine into him and give him a powder of some kind. I don't know what was in it, but I have an idea there was a little morphine in it to kill the pain.

Q. An opiate of some kind? A. Something.

Q. What has been the condition of this leg that was hurt in the tunnel?

A. The leg swells on him and lots of times he gets up during the night and walks the floor to get it to quit from cramping.

Q. Have you ever noticed any indication of swelling during the day?

A. Yes, both of his legs swell.

Q. What is the indication as to his ability to work—can he do any physical labor as before?

A. He can't do no hard work—if he does his legs pain him.

Mr. COBB.—That is all.

Mr. BORYER.—No cross-examination.

Witness excused.

At 11:10 recess for ten minutes.

11:20 reconvened.

Mr. COBB.—Mr. Reeder, take the stand. [164—  
129]

[**Testimony of Daniel S. Reeder, in His Own Behalf  
(Recalled—Cross-examination).**]

Continuation of cross-examination of DANIEL S. REEDER, the plaintiff.

(By Mr. BORYER.)

Q. I hand you Defendant's Exhibit 6 for Identification and ask you if that is a true representation of the frame-work of the tunnel.      A. No, sir.

Q. In what way does it differ?

A. Those segments were left down into the plate on the inside about an inch and a half as near as I can remember; there was a small dap, the size of the leg there—what we call a leg—they call it a segment; they were left down into this plate—this was an eight by eight plate and they were left down on the inside, on a slant like that, ran from an inch and a half out to nothing on the back side. The way the joints are put here is something similar to the way they were; they were cut in a good deal like that, that is about the way they were. Other than that I don't see anything different, anything out of the way much; that is the way the timbers were.

Q. Is it a true representation other than as you have described to the jury?

A. That is the timbers, the bents you mean?

(Testimony of Daniel S. Reeder.)

Q. Yes.      A. Yes.

Q. I will ask you what is the cross-piece, the first cross-piece, running under the cap of the tunnel, as shown on that drawing?

A. This cross-piece, you mean?

Q. Yes.

A. That is a board or brace put across there. [165—130]

Q. Connecting with what timbers?

A. It was connecting the two segments, right straight across the two segments. There was a board spiked on there and this brace running clear past—I don't see how they get the board running past—the board should be cut off like that.

Q. What do you mean?

A. The board starts out here. This plank was put across there and was a 3x12 plank.

Q. Are you certain of that?

A. Well, I wouldn't be certain, no. I wasn't in there when that was put in, if I remember right, but that is the way I remember it—that is a 3x12 plank, spiked across there, to put the deck on there. They had a covering overhead—the rock and gravel kept sifting down and they had a covering up there so the men could work under it, but it was put right up within two feet—that shows in the middle; it was put up less than two feet from the top.

Q. And are you certain that the corners of it were cut off or not?

A. I don't understand how you can get it in there unless it was.

(Testimony of Daniel S. Reeder.)

Q. What size do you think that piece was?

A. 3x12, as near as I remember it.

Q. Three-inch thick?

A. Yes, and 12 inches wide, because that was the sized plank that was there, as near as I can remember—that was the only decking or planking we had there—it was all three inches.

Q. What kind of timber was that, what kind of wood?     A. It was Douglass fir.

Q. Foreign timber? [166—131]

A. It was imported from the states; yes.

Q. Did you ever examine that timber?

A. Not particularly; no, sir.

Q. When you say it was 3x12, on what do you base that?

A. Well, we made about four or five hundred feet of fluming there and we had nothing else to make it out of but 3x12, and that is all the planking they had out there.

Q. And you made it out of 3x12?     A. Yes, sir.

Q. This brace that would go across the segments?

A. I don't know anything about that; the braces we put in was 3x12, when we were reinforcing, strengthening it, there; yes, sir.

Q. Show the jury what braces you put in.

A. I didn't put any of these braces in here.

Q. Show the jury where you put the braces in.

A. When do you mean?

Q. The time you spoke of putting the brace in.

A. I believe I have answered that already once.

Q. I don't quite understand it.

(Testimony of Daniel S. Reeder.)

A. I described once to the jury that that brace crosses the middle of these posts to keep the centre of it from coming in.

Q. And what other braces did you put in?

A. The only other braces I remember of, there was four caps in one place breaking down and two in another and they were coming down. Supposing this is the tunnel looking toward the Kennecott; they were coming down at this side, right in here. You could—it was open enough so you could bend your wire and shove it up half an inch, way into the joint [167—132] and they were beginning to crack, so we set posts from the railroad track down here on the outside end of the ties. We wanted to keep the track clear so we could run a push car through and we set posts from the outer end of the ties up to right in underneath the end of the cap, to hold it from coming down. That is one place—we had two posts like that of 8x8 fir timber. In another place we noticed the caps were beginning to break, to crack in the middle—the weight was too heavy for the middle of them. We wanted to keep the track open, that was one of the objects—we put braces in from the mudsills here right up through to the centre on each side. We went out in the woods and cut round timbers, round poles, and put one on each that way. It took two posts for each and every bent; we cut them square at the end and had them fast so they would be together, two of them in the middle of the cap; that was to hold them up until such time as we could get the new timbers in. We put in, I think,



(Testimony of Daniel S. Reeder.)

four sets of these braces—one night there we worked until midnight, there was quite a crowd of us; we had to go and get them and lay them on the push-car and bring them in—we had a car there we used to bring them in.

Q. Will you draw a line through that showing the manner in which you put those posts in?

A. That is the way the posts went in, we caught them on the mudsills and they went up and caught right in the middle of the cap, one on each side—that was to hold the middle of these caps up. These caps were coming down in the middle, on a circle like that—some of them were sprung down four or five inches. Timber will spring considerable before [168—133] it starts to break but these were sprung and were starting to break—I think we had four sets, if I remember right.

Q. The line you have drawn from the base of the upright post leading to the segment on the right-hand side of this drawing is the line before indicated, the post that you put in on that side, is it?

A. Yes, sir.

Q. And corresponding on the other side is the line to indicate the other post that you put in, is it?

A. Yes, sir.

Q. About how much do you say that that cap had swayed or bent?

A. Some of them, as near as I can remember, had sprung down some four or five inches, I wouldn't swear positive, but I know that you have got to put from two to three inches spring in that timber before



(Testimony of Daniel S. Reeder.)

they will start to break, and they were all starting to break.

Q. You mean all of the four bents that had not been reinforced?

A. No, sir; they were four bents way out, some distance from it—I don't remember—but they wanted to save it, keep it from caving in, because when it started in one place they couldn't tell how far it would run, breaking and caving in; we were timbering, but we hadn't got up to them at the time.

Mr. BORYER.—I desire to offer this in evidence as Defendant's Exhibit #6.

Mr. COBB.—He has not testified to all of this. I object to that going in until there is some testimony about it.

Q. I will ask you to look at this same exhibit, the drawing, showing this upright post, with a brace extending across, and ask you if that is a true representation of the brace [169—134] that was put on?

A. No, sir.

Q. In what way does it differ?

A. You have five bents there in front of the new timbers when there wasn't but four.

Q. Then the drawing represents one extra timber?

A. Yes, one extra set of bents there.

Q. Otherwise, is it a true representation?

A. I told you before, that brace proposition, I don't remember much about it. I didn't help put the brace on, and I don't remember but very little about it. I don't know whether the brace was put on when I was in there or not.

(Testimony of Daniel S. Reeder.)

Q. Did you see the brace?

A. I wouldn't swear positively I have seen it, but I kinder think I did.

Q. Do you recall if that is the manner in which the brace was put on?

A. It is, to a certain extent; you have got one set of timbers too many in there, for the brace to be put on the way it was put in there.

Q. Outside of that, does it represent it as you remember it?

A. Well, it is, comparatively speaking, yes, as near as I can remember—I don't remember much about it, because the brace was taken off before I got in there, and all I remember about it was, the one on the side that the cave came in—that was all I remember about. I don't remember about the brace that was standing at all. All I do remember was the brace on the opposite side, the side the cave came on, that is all I do remember about. After we were working in there, we went out—there was no deck in there to work on [170—135] when we quit working there, when we went over to the depot. We had just put these timbers across that; they put this deck on later on and they put that in—Mac's gang with the other lot of carpenters put that in, after we went over to the depot, and for that reason I don't know just what these men, all of them, did in there after I left there. I can only tell you about what I seen for the short time I was in there, but they had made quite a change in the four or five days we were over at the depot, from the time I left there until such

(Testimony of Daniel S. Reeder.)

time as I came back. There was no deck in there for them to work on when I left there, because we worked up there with a raising car, and we put in some heavy timbers, if I remember right, 8x8, across which they put a deck on afterwards; we put them in, but that is all we done. There might have been a few plank thrown on there, but I don't remember of this deck in there—that they were running wheelbarrows. There was no such thing as wheelbarrows up on that at all when I was there.

Q. Did you have a loading platform in the tunnel at the time?

A. No, sir; not that I remember of—I don't remember just how the thing was fixed in there.

Q. You were taking some dirt out of there?

A. They were taking out a lot up to the time that we came with the raising car. We couldn't take out dirt when we had the raising car in there, because we were running the raising car, as anyone has got to do, to put in the new timbers. What they were doing with the McFarland gang at that time, I don't remember, but they couldn't be taking out dirt. The raising car was an ordinary flat car—they couldn't be taking out dirt when we were raising. [171—136]

Q. You did have a platform in there?

A. We had put these heavy timbers across, but as far as a platform—I don't remember that we built any platform while I was in there. McFarland's gang done that after we went to the depot.

Q. I will ask you if that is a correct drawing

(Testimony of Daniel S. Reeder.)

of the platform that was in there, the loading platform?

A. That I don't know—that proposition was made after I came out of there.

Q. You don't know about that?

A. I don't remember that platform; no, sir.

Mr. BORYER.—Now, I desire to offer this in evidence.

By the COURT.—It may be admitted for the purpose of illustrating the testimony of the witness.

Mr. COBB.—We have no objection to it for that purpose.

Q. Now, I want to find out just which one of these segments that you saw give way, and the location of the segment as to the place in the tunnel? That is my object, and if you will bear that in mind—

A. Which segment?

Q. I understand in your testimony you stated that you saw one of the segments that was connected with the cap give way and start to fall, and that is the first that you saw of the tunnel caving in—do you recall that?

Mr. COBB.—We object to that—counsel is mistaken.

The WITNESS.—I said I saw the cap come down—I never said nothing about the segment. I said I saw the caps coming, and I ran, and I didn't stop to look very long, believe me.

Q. Now, I just want to get the location of that cap, where it was with reference to the tunnel?

(Testimony of Daniel S. Reeder.)

A. I don't know which one of the middle four—there was four bents left there, but I rather think that I know that it was one of the middle four, and I think it was one next to the face, not the one next to the new timbers. I think it was the middle one next to the face. There would be four timbers. That drawing you have got there of five timbers is a dream, that fifth timber.

Q. I will try to ask you a few questions just to locate it—say that you were facing Chitina, with your back toward the end of the tunnel that goes to Kennecott. I understand that there were four bents across this tunnel that you were working on, is that correct? A. That hadn't been reinforced.

Q. There would be four bents—there would be a post on each side of the tunnel going up, then?

A. Yes, sir.

Q. And those posts were about four feet apart, as I understand? A. Yes.

Q. And now, assuming that you were facing—or what position were you standing in when you saw this cap?

A. I was pretty near under it; I don't remember; as near as I can remember, I was towards the new timbers.

Q. Let us find out—toward which end of the tunnel?

A. I was a little bit nearer the Kennecott end of the tunnel than the centre of these timbers that fell. I was under them, but I don't recollect exactly where I stood or how I was standing.



(Testimony of Daniel S. Reeder.)

Q. Were you facing Chitina?

A. I don't know that.

Q. You can't say at this time whether you were facing the Chitina [173—138] or the Kennecott end of the tunnel?

A. No, I wouldn't say positively, but I think I was facing this end, as near as I can remember.

Q. Facing towards Chitina? A. Yes, sir.

Q. Now, let us assume that you were facing towards Chitina, with your back toward the Kennecott end of the tunnel—now, then, on which side of the tunnel did you see this cap?

A. On the left-hand side?

Q. On the left-hand side? A. Yes, sir.

Q. Facing Chitina?

A. Yes, the left-hand end of the cap.

Q. Under which one of the bents?

A. One of the two middle bents, I don't know which.

Q. Then, do you recall where you were standing in reference to those two middle bents?

A. I was pretty near under them.

Q. What attracted your attention?

A. Why, the dirt rattling down from above; the dirt began to move and you could hear it rattling.

Q. And you looked up and you saw that this cap had started to move? A. Yes, sir.

Q. And then you started to run? A. Yes, sir.

Q. Now, then, you are certain—if you are not certain, I want to get this as certain as you can make it—to the best of your memory, do you feel certain that



(Testimony of Daniel S. Reeder.)

it was one of the caps on one of the middle bents?

A. Yes, sir. [174—139]

Q. And that it was on the left-hand side?

A. Yes, sir.

Q. What were you doing at that time?

A. I wasn't doing anything.

Q. What had you been doing?

A. I just come in from outside—I went after my tools and just came through the tunnel where it was broke down.

Q. You hadn't started to work?

A. No, sir; I hadn't started to work at that time.

Q. Did you have any tools with you?

A. Yes, sir. I just paid my tools down and just stepped back when this thing started to rattle.

Q. I understand, then, that you had just walked up to this point? A. Yes.

Q. Put your tools down, and you heard a noise and you looked up and saw this cap moving?

A. Yes, sir.

Q. And then you ran out, or started to run out and was caught? A. Yes, sir.

Q. The earth fell behind you, then, did it, so as to cut you off from going out towards the Kennecott end?

A. No, sir; I was caught on the Kennecott side of it. I ran towards Kennecott.

Q. And the earth fell that way, did it?

A. It would fall behind me.

Q. It fell behind you, so as to catch you going out of the tunnel?

(Testimony of Daniel S. Reeder.)

A. I went down in there—I got right in among the braces—I was on the Kennecott side of the cave-in. I was just about underneath the first set of new timbers, as near as I can remember. [175—140]

Q. What tools, carpenter tools, did you have with you—were they carpenter tools? A. Yes, sir.

Q. What were you going to do?

A. I was going to dap out there so we could put in 12x12's in those plates that were in there; we had to cut a 12-inch dap in every one of those plates in order to put in new posts.

Q. What do you call the plates?

A. They ran straight through on top of the posts on the old timbers.

Q. How much dapping did you do?

A. We had to cut in a notch—some of them we had to cut clear in two; others we didn't have to cut any more than two-thirds way through—it depended on how much the post had given down below. We generally set the new timbers in on a kind of a line—if the old timbers had sprung considerable below the lagging it would be no use, you couldn't get the top of your post out where it should have been—and we would make a kind of average—

(By the COURT.)

Q. The work you were doing was—

A. Just at the foot of the legs or segments.

Q. Then you started to work to make a place for the brace or post to go under the point that fell?

A. Yes, sir.

By the COURT.—I didn't understand it that way.

(Testimony of Daniel S. Reeder.)

The WITNESS.—That was to drop in at the top of the posts—the top of the post came to the top of this old plate, which we were doing or dapping in the roof or on the side, on the [176—141] side right at the turn.

Q. Then you were going to put in a post under those caps,—is that correct, as a support for those new caps?

A. I was going to put in new timbers there.

Q. What kind of new timbers were you going to put in?     A. 12x12.

Q. Were you going to take out any timbers?

A. We didn't have to, just cut a notch in there.

Q. And then you were putting in extra timbers?

A. Yes, sir.

Q. And leaving the old timbers?     A. Yes, sir.

Q. Why were you putting in those extra timbers?

A. The old timbers were too weak to stand the pressure.

Q. And you were trying to strengthen them?

A. Yes, sir.

Q. Do you know where Likits was working at that time?     A. I know what he told me.

Q. Did you see him that morning when you went in?

A. Well, I wouldn't swear positively whether I saw him or not—I think I must have seen him, because I went over on the opposite side, and I must have seen him on the side they were on. John was my partner and we were on the other side, we were working on the opposite side, and I must have seen

(Testimony of Daniel S. Reeder.)

him because we were going to work on the opposite side.

Q. Then Likits and Sutton were working on the right-hand side of the tunnel, on the corresponding bent that you and your partner were working on on the left-hand side?

A. We were not working at all—I and my partner were not working, neither one of us had got to work.

[177—142]

Q. But that is where your work was going to be?

A. Yes, sir.

Q. You say you went over on the opposite side and talked to the workman that was working on the other side?

A. I don't think I said a word to John at all.

Q. Did you see him there?

A. Yes, I had—he was standing on the next link of plank from what I was on.

Q. You saw him there, then?      A. Yes, sir.

Q. Did you see Sutton there?

A. I don't remember—I must have seen him because Sutton and Likits were together—I must have seen him; I don't remember that part of it.

Q. And at the time you saw this cap give, where was Mr. Likits and Mr. Sutton?

A. I presume they were on the other side of the tunnel.

Q. What was the distance across that tunnel?

A. I don't remember whether it was 15 ft. or 17 ft., I have forgotten—it was an odd foot, I know—it was either 17 ft. 3 inches on an average or it was 15

(Testimony of Daniel S. Reeder.)

ft. 3 inches, about three inches—I have forgotten. As near as I can remember we had to cut about 8 inches off of a 16 ft. plank between the timbers.

Q. Where was your partner standing?

A. He was on the next link of plank, the ones I tried to get on to to get out of there—he was on them plank when it went down.

Q. Did you see him standing there?

A. No—well, I must have seen him. I don't remember anything [178—143] about it.

Q. How long had you been standing there before you went to work?

A. A couple of minutes maybe, two or three minutes maybe.

Q. Would you say it was as much as five minutes?

A. Possibly was. I don't hardly think it was, though—it would take you about five minutes before you can see anything when you come in from outside with this light, and you have to stand around a certain length of time before you can see anything to work—any man that has gone in with lights underground knows that to be a fact—you have to be in a few minutes before you see anything.

Q. Is that the reason you were standing around?

A. It certainly was.

Q. Because you couldn't see?

A. No man can see when you first come in—every man that has worked underground knows that as a matter of fact; that is the reason that I can't call exactly how the things were in there, because I was not there long enough, as the saying is, to get your

(Testimony of Daniel S. Reeder.)

eyesight under ground.

Q. How do you enter that tunnel?

A. I went in from the Chitina end, through the breakdown.

Q. Was that obstructed?

A. Yes, I had to go in over the breakdown, over where it was broke down; about 180 or 90 feet was broken down.

Q. Then you were in the open?     A. Yes.

Q. Over that 180 or 90 ft.?     A. Yes, sir.

Q. And that extended clear to the point where you were going [179—144] to work, did it not?

A. Yes, sir.

Q. There was an opening there so that the light could come into the tunnel at that point?

A. Where do you mean?

Q. Just after you got over this 180 or 90 ft. of the breakdown?

A. There couldn't much light come into the tunnel, 400 ft. long—in the middle.

Q. How far were you working from that end of the breakdown?

A. The Kennecott end of the breakdown?

Q. Yes, the Kennecott end of the breakdown?

A. We were working right at the Kennecott end of it, end of the breakdown—that was somewhere not far from the middle of the tunnel.

Q. The idea that I am trying to get at is, that you were working right next to the breakdown, were you not—right next to the end of the breakdown?

A. Yes, sir.



(Testimony of Daniel S. Reeder.)

Q. Then what obstructed the light from entering the tunnel there?

A. The light from outside? There was about 200 ft. of a crooked tunnel for it to come through—that tunnel is on a curve.

Q. We will say that these outside lines are the lines of the tunnel—

A. Yes, but you should have made them on a horseshoe, crooked, because there is quite a crook in that tunnel.

Q. Now, we will say that this is the Chitina end?

A. Yes, sir.

Q. Now, then, the breakdown, as I understand it, commenced at that [180—145] end and extends back here, about how many feet?

A. No, it didn't commence at the end—the timbers we put in there in the spring were still standing there, 6 or 8 bents from the end of that tunnel, were still standing at that time. The cave-in was over either 6 or 8 bents from the end, back 180 ft. from this end, further through, on back.

Q. It was 6 or 8 bents from that end, back about how many feet.

A. I think it was 180 ft., if I remember right—I think it was 45 bents.

Q. Then we will say that carries it to this line?

A. Yes.

Q. Now, in reference to this line that I have indicated here with my pencil, marked A, where were you working?

A. We were working, going to work, along the

(Testimony of Daniel S. Reeder.)

first set of timbers, four timbers behind that—toward the Kennecott end.

Q. That would be them 16 ft. from the letter A, would it not?

A. No, four sets of bents was not 16 ft. when I was a carpenter.

Q. What was the distance between the bents?

A. It takes five sets of bents to make 16 ft.

Q. Then it would be less than 16 ft.?

A. Yes, it was 12 ft.

Q. It was about 12 ft. from the letter A?

A. Yes, sir.

Q. And we will say that that 12 ft. is represented by the letter B.     A. Yes, sir.

Q. All of the earth and top of the tunnel from 'A' up to within the point where you said it started to break down, was lying down in the cave, was it not?

A. Yes, sir. [181—146]

Q. So that the earth and timbers that had fallen was down below the roof of the tunnel at A, was it not?

A. About level with the roof as near as I can remember.

Q. How did you get in?

A. There was a hole at this end, you could go right by—the old timbers kept sliding down all the time, but there was a hole that you could get through and go underneath the cap and get out and come through the open cut.

Q. Did you crawl through this hole?

A. Yes, on my hands and knees—and got against

(Testimony of Daniel S. Reeder.)

the wall, followed along the wall going through. I have worked underground in Fairbanks and the Dawson country until I know how to go through an underground cut, because I have mined considerable, and all you have got to do is to keep along the walls and you can go through without getting your head cracked.

Q. Did the light penetrate through this opening?

A. Very little. I couldn't see anything after I once got in; in fact, I couldn't see the walls. I had been in there before and helped them lay a pipe and I knew the lay of the ground and knew just how to go through.

Q. Could you see Likits and Sutton on the other side? A. I don't know whether I did or not.

Q. It was so dark you couldn't see them?

A. I could see them 180 ft. through the dark.

Q. I mean when you were standing there?

A. After I got in?

Q. Yes.

A. I believe I told you a while ago I was not certain I saw them. [182—147]

Q. Could you see them?

A. I presume maybe I could, after I got used to the light.

Q. It was so dark you couldn't distinguish them?

A. They had lights at the other end where the men were working—they had two carbide lights there as well as some small lanterns.

Q. It was about 17 ft. across the tunnel, I understand?

(Testimony of Daniel S. Reeder.)

A. I don't know whether it was 15 ft. 2 or 3 inches or whether it was 17 ft.

Q. Approximately that?      A. Yes, sir.

Mr. BORYER.—That is all.

12 o'clock—recess, until 2.

#### AFTERNOON SESSION.

Redirect Examination of Mr. REEDER.

(By Mr. COBB.)

Q. Mr. Boryer this morning asked you in regard to some braces that you indicated to the jury there as having been placed by you and the men working with you, running from the timber in the side of the tunnel or mudsill up to the center of the cap at an angle, and another one at the same angle on the opposite side to it, to support the cap. When were those braces put in?

A. Well, they were put in some time along last part of July, I should judge, about the last of July or first of August—about the last of July; it was just when we were putting in the new timber—we put them in when we were timbering the tunnel, at that time.

Q. It was some time prior to this accident?

A. Yes, a week or ten days, I should judge.

[183—148]

Q. Where were they put in?

A. Where we put two posts under there was about, I should judge, 15 sets back of where the breakdown was.

Q. Where the accident happened you mean?

A. Yes, sir.

(Testimony of Daniel S. Reeder.)

Q. It wasn't at the same place where this accident happened?

A. No, it was back further, before we got up to that.

Q. I believe you stated that they were put in there to prevent a cave-in at that place by reason of the timbers being too weak? A. Yes, sir.

Q. Were there any such precautions as that taken at the place where the accident happened?

A. No, sir.

Q. During the four or five days that you had been in there could any of such precautions have been taken?

A. Yes, it could have been done at any time up to the time of the accident.

Q. If the roof of the tunnel where this cave-in happened had been secured by the braces such as had been used where you were at work in there before, could this accident have happened that morning that you were hurt there? A. No, sir.

Q. Who had charge of the work of—the entire work of the reconstruction of that tunnel?

A. Mr. Forrester.

Q. He was the superintendent in charge of it?

A. Yes, sir.

Q. Now, you were shown some checks here this morning countersigned [184—149] by E. C. Hawkins—Who was E. C. Hawkins?

A. Well, I believe, the way I understood, that he was vice-president and general manager of the Copper River & Northwestern Railway Co.

Q. And here is one countersigned E. C. Hawkins,

(Testimony of Daniel S. Reeder.)

per George Geiger—who was George Geiger?

A. He was the new superintendent of the Copper River & Northwestern Railway Co.

Q. Mr. Boryer spent quite a good deal of time this morning to show that on this part of the tunnel indicated in black here, which is intended to represent the cave-in, that there was light from the surface coming down because of the cave-in—I will ask you whether the cave-in extended clear through to the surface?

A. No, sir, no lights in there except what we put in there, artificial, either acetylene or coal oil.

Q. No light in there whatever?      A. No, sir.

Mr. COBB.—That will be all.

(By Mr. BORYER.)

Q. Do I understand you that there were no braces on those bents?

A. There wasn't the last time I was in there, I don't remember of any. There was no brace, upright, under them to keep them from coming down.

Q. You mean that there was no brace standing up, perpendicular?      A. No.

Q. Do you know whether there was any other brace there?

A. This brace, like the one on the opposite side, that one that [185—150] Likits and Sutton between them tore off.

Q. You are talking about the last four sets?

A. Yes, sir.

Q. How do you know there wasn't any braces there?



(Testimony of Daniel S. Reeder.)

A. I didn't see any when I walked in there and I could see the end of it. The acetylene lights were such so that you could see the last two or possibly three bents, but back of that it was hard to see anything because the reflectors were turned towards the boys.

Q. You don't know as to the other?

A. If there had been any posts in there I think I would have seen them because I was standing there close to the acetylene light,—in fact, I just spoke to O'Neill, just before I turned around.

Q. Then you remember that O'Neill was in there now?

A. Yes, sir—I remembered all the time that he was in there.

Q. I understood this morning that you didn't recall anyone?

A. O'Neill's name I don't remember has been mentioned in this case—I have never heard it—at least I never mentioned it.

Q. Now, you say that these checks were countersigned by E. C. Hawkins?

A. No, I didn't say anything about how they were signed.

Q. Countersigned?

A. The signing is all on there—I never paid any attention to that part of it.

Q. I understood Mr. Cobb to ask you a moment ago if those checks were not countersigned by E. C. Hawkins?

A. Mr. Hawkins's name is on them; that is all

(Testimony of Daniel S. Reeder.)

I know about it.

Mr. COBB.—I asked him who Mr. Hawkins was.  
[186—151]

The WITNESS.—He asked me who Mr. Hawkins was, whose name was on the check.

Q. Who did you say Mr. Hawkins was?

A. He was known here as vice-president and general manager of the Copper River & Northwestern Railway Co.—that is the way he was commonly known.

Q. Wasn't he vice-president and general manager of the Katalla Company?

A. I never knew it was a corporation.

Q. And chief engineer of the Copper River & Northwestern Railway Company?

A. I never knew that the Katalla Company was a corporation.

Q. Do you know, Mr. Reeder, what position Mr. Hawkins held with the Katalla Company?

A. No, sir.

Q. Do you know what position he held with the Copper River & Northwestern Railway Co.?

A. Not only just what I have seen and the term he went by here.

Q. Did you ever see his name in connection, where he signed it as Vice-president and General Manager of the Copper River & Northwestern Railway Company?

A. I never saw him sign his name, I think, in my life. I don't remember that I ever seen him sign it.

Q. You don't know, then, what his position was?

(Testimony of Daniel S. Reeder.)

A. I stated it was general talk—I didn't say he was.

Q. You don't know?

A. I knew what was the common talk around the town here—what it was generally understood.

Q. As a matter of fact, don't you know that he was vice-president and general manager of the Kattalla Company and chief [187—152] engineer of the Copper River & Northwestern Railway Co.?

By the COURT.—He has answered that.

Q. This check that you say is countersigned by Mr. Geiger—did I so understand you?

A. I believe there is one of them there signed by George Geiger. I am not certain.

Q. Is that the one you have reference to as being signed by Mr. Hawkins, per Mr. Geiger? (Handing witness check.)

A. Hawkins name is on there—I don't know anything about it.

Q. Per George Geiger, is it not?

A. Yes, that is the way that it is signed.

Q. And over that is chief engineer, is it not?

A. Yes, sir.

Q. That is the check you had reference to that Mr. Geiger had signed?

A. I don't understand what you mean.

Mr. COBB.—That is the check I had in my hand when I asked you the question?

A. He asked me who Mr. Geiger was—that is all I heard.

Q. He signs that for Mr. Hawkins, does he not?

(Testimony of Daniel S. Reeder.)

A. Yes, that is the way he signs there.

Q. As countersigned by the engineer?

A. Yes, sir.

Q. That check is dated when?

A. The 15th of November, 1911.

Witness excused. [188—153]

**[Testimony of William H. Chase, for Plaintiff.]**

WILLIAM H. CHASE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. William H. Chase.

Q. What is your age? A. 40.

Q. What is your profession?

A. Practicing medicine and surgery.

Q. What is your residence? A. Cordova.

Q. How long have you resided here?

A. A little over four years,—about four years in this town.

Q. How long have you been practicing medicine and surgery? A. About 17 or 18 years.

Q. Since you have resided in this vicinity have you ever held any position with the defendant companies in this case, or either of them? A. No, sir.

Q. Did you ever do any professional work for them, the Copper River & Northwestern Railway Co. or the Katalla Co.?

A. Why, not directly. I have in emergencies.

Q. In emergencies out along the railroad when called in? A. Yes, sir.

(Testimony of William H. Chase.)

Q. Do you know the plaintiff in this case, Dan Reeder? A. Yes, sir.

Q. How long have you known him?

A. I think about three years, possibly a little longer,—three or four years. [189—154]

Q. I will ask you if at the time of the accident at the tunnel out near Chitina, on or about the 7th day of August, 1911, you were called in in that *emergency* the defendant company. A. Yes, sir.

Q. Where were you at the time the accident happened?

A. I was at Strelna when I got the word—that is Mile 146.

Q. Were you out there on business for the railroad then?

A. No, I had been over to the Kotsina country and arrived there at Strelna about 8 o'clock in the morning—I had walked all night.

Q. Who did you get the word from?

A. I guess it was the station agent there. I have forgotten now—I couldn't say positively who it was.

Q. Railroad station agent?

A. Railroad station agent.

Q. That was on the line of the Copper River & Northwestern Railroad? A. Yes.

Q. Did you go up to this tunnel or the hospital near it?

A. I took a speeder and started for Chitina and when I was about halfway down I met an engine coming for me and then went to Chitina,—I didn't go to the tunnel at the time, because they said that

(Testimony of William H. Chase.)

some of the men had been taken over to the town of Chitina and it would necessitate an extra round-about walk if I should go to the tunnel, into the tunnel.

Q. You went to the railroad hospital at Chitina?

A. They had no regular hospital—I went to a couple of tents right near town, improvised, I suppose, into a hospital—I [190—155] don't know what they had been used for.

Q. Did you see the plaintiff that day, Reeder?

A. Yes, sir.

Q. What time as near as you can recall?

A. I wouldn't say positively; it was probably somewhere around 11 o'clock.

Q. Some time towards the middle of the day, at any rate? A. Yes, sir.

Q. Where did you see him?

A. Why, I first saw them bringing him on a stretcher—I couldn't recall whether it was a stretcher or a bed. I see some men coming down the track with some one and I was told at that time it was Dan Reeder; at this time I was in the tent, dressing some superficial wounds on other people caught in the tunnel.

Q. Did you make an examination of Mr. Reeder at that time?

A. I made a superficial examination.

Q. What did you find?

A. I found a swelling and discloration in the left groin, here (indicating), very sensitive to touch; the left leg I couldn't rotate or manipulate without ex-



(Testimony of William H. Chase.)

cruciating pain he described as in the lower region of the abdomen. If I remember correctly, the leg itself was not sensitive below the hip, but if you attempted to move it or make any amount of articulation, it would cause him pain.

Q. Now, tell the jury what that indicated to you as a physician and surgeon.

A. I made as good an examination as I could. I looked for crepitatus or grating to see if there were any bones broken, and I could get none at that time, but there was so much [191—156] swelling I thought possibly there might be some internal rupture of a vein or artery and I put him in as comfortable a position as I could—I had three men to look out for and I think I administered cold applications, so in case there was a rupture of a blood vessel, it would cause coagulation of blood and contract the blood vessels and lessen the hemorrhage, if there was a hemorrhage there. After I put him in as comfortable a position as possible and put on these applications, then I went to attending to the others.

Q. That is all you did for him that day?

A. I wouldn't say positively whether it was or not—I may possibly have given him a sedative, something to quiet him,—I wouldn't say.

Q. Do you know when he was taken down to the regular hospital of the company? A. No.

Q. Who were the regular physicians of the company at that time?

A. Doctor Smith, I believe, was in charge.

(Testimony of William H. Chase.)

Q. Did you see the plaintiff after that at any time?

A. Yes, I saw him some time after—I don't recall the date.

Q. Where was he then?

A. In the Katalla Company hospital.

Q. Can you tell about how long afterwards that was?

A. It was so long ago, I don't recollect—I generally keep a diary of those things and if I had the time I might refer to it for dates.

Q. Was it a week or month?

A. I imagine offhand that it was at least a month. I wouldn't [192—157] swear to that, I wouldn't say positively.

Q. It was quite a while at any rate.

A. Yes, sir.

Q. What condition was he in then?

A. I made no examination at that time—I was called in to give him an anesthetic for an operation.

Q. You assisted Doctor Smith in performing an operation? A. Yes,—I gave him the anesthetic.

Q. What sort of an operation was performed.

A. It was impossible for me to see just what they were doing.

Q. You know what they were doing?

A. From the general talk.

Q. Tell the jury what they were doing and what you did there.

A. From what I could learn in the talk I should imagine they were joining the fracture, if there was

(Testimony of William H. Chase.)

a fracture—I never saw this X-Ray picture, but I understood there was a fracture of the arch of the pelvis.

Q. That is the bone that supports the lower bowel?

A. Yes, sir; I understood it was fractured, and it was necessary to cut, make an incision and drill holes through this bone, and I wouldn't say whether they put a wire on to it to get a ligature to join the two edges together.

Q. You didn't observe the condition of his leg at that time?     A. No, sir.

Q. Was it dressed in any way?

A. I wouldn't say positively—he was all covered up as they cover patients.

Q. Have you attended the plaintiff since in a professional capacity?

A. Yes, I have been called in. He is an Eagle and I am the [193—158] physician for the Fraternal Order of Eagles.

Q. What is his condition to-day as to health, as to his bowels—whether they are in proper condition or not or normal health?

A. That would be very hard to determine, almost impossible to say—I couldn't say as to that.

Q. You have attended him for bowel trouble?

A. Yes, I have been called in in emergencies.

Q. What was he suffering with when you were called in?

A. I remember distinctly once it was some internal disturbance; if I remember correctly, at that time, I attributed it to something he had eaten; there was

(Testimony of William H. Chase.)

a distention of the abdomen—distention with gas.

Q. Any connection between the suffering he had been undergoing and the injury to the pelvic bone?

A. I don't think so—I think it was an acute condition, possibly brought on by something he had eaten. We often get those cases.

Q. Was there any indication of a stricture of the lower bowels or anal passage by reason of this injury? A. Not that I ever discovered.

Q. Did you ever make any examination for it?

A. Not for the rectum; no, sir.

Q. Have you had any occasion to examine his legs?

A. I suppose I made a general superficial examination when I was called in and he was suffering from this acute pain.

Q. You did examine then carefully to see whether there was any connection or not between his injury that he received of the pelvic bone and this disturbance of the lower bowels? [194—159]

A. Perhaps the local pain may have been due to more or less constriction caused by the incision and then by distending the abdomen with gas, it may have brought the tension to that particular part of the tissues, causing a sensitiveness at that point.

Q. Did you ever give him anything for his leg?

A. I don't remember of ever giving him anything.

Q. To refresh your memory, I am going to ask you if about April, about a year ago now, you were not called upon when he was suffering with his legs?

A. It would be impossible for me to say that because I have been called so many times in different

(Testimony of William H. Chase.)

cases—I don't recall the particular instance.

Q. To refresh your memory a little further—on that occasion didn't you advise him never to take any drink that had alcohol in it, on account of his leg? A. I don't remember that; no, sir.

Q. Do you keep a diary of these things?

A. Yes, sir, I keep a dairy of calls. I don't keep a dairy—

Q. Not what you tell the patient? A. No.

Mr. COBB.—That is all.

Mr. BORYER.—No cross-examination.

Witness excused. [195—160]

**[Testimony of H. C. Feldman, for Plaintiff.]**

H. C. FELDMAN, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. H. C. Feldman.

Q. What business are you in?

A. Hardware business.

Q. What is the name of your firm?

A. Northwestern Hardware Co.

Q. How long have you been in business here in Cordova? A. Four years.

Q. Did you have occasion during the year 1911 to ship any goods out over the line of the Copper River & Northwestern Railway.

A. Not under the Northwestern Hardware Co.'s firm name—the firm's name was Feldman & Gerber in 1911—the firm name changed.



(Testimony of H. C. Feldman.)

Q. I will ask you if you ever saw this before.  
(Handing witness paper.) A. Yes, sir.

Q. Were these bills of lading issued for shipments on the Copper River & Northwestern Railroad?

A. Yes, sir.

Q. Examine both of them? A. Yes, sir.

Q. Freight paid on them? A. Yes, sir.

Mr. COBB.—We offer these in evidence.

By the COURT.—They will be admitted and appropriated marked.

Mr. BORYER.—We ask for an exception to the ruling. [196—161] Exception allowed. (They are marked Exhibits “G” and “H.”)

Mr. COBB.—That is all.

Mr. BORYER.—No cross-examination.

Witness excused.

Plaintiff rests.

**[Proceedings Had on Motions for Nonsuit.]**

Mr. BORYER.—I have a motion to make.

The jury being excused, Mr. Boryer filed separate motions for a nonsuit on behalf of each of the defendants.

After argument by counsel—

By the COURT.—In refusing this nonsuit, I would say that if Reeder had been working those last four days there—had been working along on day shift and had returned the following morning, with all the knowledge he has shown here, I would grant the nonsuit, but from the very fact that he was away those four days, whether there was a burden then on the



Railroad Company to have done certain work those four days, whether they did it or not, or how they did it, I believe are questions for the jury. I say that eliminating the Acts of 1906, 8 and 10.

The motion being filed separately for each defendant, the ruling is separate as to each motion and exception allowed each defendant. [197—162]

**[Testimony of Chris Likits, for Defendants.]**

CHRIS LIKITS, recalled as a witness in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. I believe that you were called for the plaintiff in this case?     A. Yes, sir.

Q. You testified here in this case before?

A. Yes, sir.

Q. Where were you working on the 7th day of August, 1911?     A. In the Chitina tunnel.

Q. Where were you working on the 6th day of August, 1911?     A. In the depot.

Q. On the 5th day of August, 1911?

A. I was working in the depot.

Q. On the 4th day of August, 1911?

A. Well, I don't know—I guess I worked four days in the depot—three or four days. I am not sure.

Q. What were you doing at the depot?

A. Putting up some shelves down there and doing some finishing work and changing tables and such work.

Q. Who was assisting you?

A. Dan Lee was the foreman.

(Testimony of Chris Likits.)

Q. Who else? A. I don't remember now.

Q. Was Reeder?

A. I think they were moving some building or something down there, doing some outside work, but I was working inside the building and they were working outside—I think they were. [198—163]

Q. Where had you been working just previously to going to work down at the station?

A. Working in the tunnel.

Q. Who was working with you in the tunnel, the last time you worked in the tunnel?

A. I think all the gang were there then.

Q. Was Reeder working with you?

A. Yes, I think so.

Q. Then you quit work, did you, all of you?

A. Some of us, if I remember right, some of us went to the depot, and I don't know what the rest were doing.

Q. The carpenters all left there, did they?

A. I believe they did.

Q. Reeder left? A. I believe he did.

Q. You left? A. Yes, sir.

Q. And the other carpenters left there?

A. Yes, I believe so.

Q. Then when did you go back to work in the tunnel?

A. About half-past 6 the 7th day of August, 1911.

Q. Who went back there to work with you?

A. Why, John Sutton.

Q. Who else?

A. I don't know the men's names down there;

(Testimony of Chris Likits.)

there was lots of men down below there excavating and moving dirt down below.

Q. Moving dirt?     A. Yes, sir.

Q. What kind of dirt were they moving?

A. What came out of the cave, gravel and rocks and clay and [199—164] such stuff.

Q. Removing dirt from the hatch?

A. From the cave and wheeling it into the railroad cars and taking it outside of the tunnel.

Q. That is the cave-in that happened some time—

A. Before.

Q. In July?     A. Yes, sir.

Q. What other carpenters, if any, were there with you that morning, besides yourself and John Sutton?

A. I don't know who they were, but I heard Dan Reeder's voice just before the cave-in.

Q. Who is Dan Reeder?

A. The gentleman sitting there.

Q. You heard Reeder's voice then?

A. Yes, sir.

Q. And then you three were the only carpenters that were in there working on those four bents?

A. Well, I don't know; there might be some more in there, but Dan Reeder, I heard his voice. I didn't see him, but just before the cave-in, I heard his voice.

Q. You had been working about how long?

A. About fifteen minutes or so, I guess.

Q. What work had you done during those fifteen minutes?

A. When I came in there first it was dark in there and John Sutton was holding a lantern for me, and I

(Testimony of Chris Likits.)

took the center from post to post, took the center and marked out a dap for the twelve-inch timber to go in.

By the COURT.—Tell where that dap was with reference to where the new timber had been put in—the set nearest the base? [200—165]

A. No, it was nearest the next set where we had knocked off working.

Q. That was on the right-hand side of the tunnel, was it not?

A. Yes, sir; looking in it from the Kennecott end.

Q. Looking in towards Chitina, that was on the right-hand side? A. Yes, sir.

Q. He took the brace off there, did he?

A. When I got through squaring up and marking, I said, "Here is a square; you square out your place for yourself," and he took the square and I held the lantern for him, and when he was doing it why the brace was in the way, and he says, "The brace has to come out," and I says to him, "Better don't take it out; we have to see the foreman or put in another one in its place before we take that one off. He says, "It ain't holding nothing, anyhow," and he took a crowbar about so long (indicating) to put between the brace and wall-plate, and pried the brace off, and he went up and took an adz and chopped off the sliver—it was split from the nail down to the lower end; he chopped that sliver off and the brace dropped down. There was a platform there about, I should judge, 8 or 10 ft. from the clear.

Q. What was that brace attached to?

(Testimony of Chris Likits.)

A. It was attached to a segment and to the wall-plate.

Q. And it connected up with those other four segments across there, did it?

A. It connected up with the first segment in the wall-plate, but the two middle segments were resting on it, nailed to it.

Q. Who do you say put that on there?

A. It was Dan Lee, I think, and Lockhart and myself; we three. [201—166]

Q. You say you told him not to take it off?

A. Yes, sir.

Q. Why did you put that on there?

A. Why, I guess to keep them timbers from going ahead, I guess, that first bent going ahead, from moving ahead.

Q. Why didn't you want him to take it off?

A. Well, I thought we shouldn't do any work except the boss told us to do so.

Q. Every time you drove a nail, did you have to have the boss tell you to drive the nail?

A. No, sir.

Q. Why didn't you want him to take that off?

A. Why, I thought it didn't have to come off; we had to put another brace in place of it, before we took that one off.

Q. Why would you have to put one in in its place?

A. To keep that end from going ahead.

Q. What would be the result if that brace was taken off and the timber would go ahead?

A. I guess the first bent would fall down.

(Testimony of Chris Likits.)

Q. What effect would that have on the top of the tunnel?

A. It would have nothing to do with the top. I don't think.

Q. What effect would it have on the side?

A. The side will fall in, I guess, or would.

Q. That is all the work that you and Sutton did that morning before Reeder came?

A. That is all, yes, sir.

Q. Was there any carpenters working there, around those four bents that morning, besides yourself and Sutton?

A. Well, I don't know; I didn't see any. [202—167]

Q. You didn't see anybody?

A. Of course, I saw some excavators down there, going with wheelbarrows full and back.

Q. That was taking the dirt and muck from the former cave-in, taking it out of there?

A. Yes, sir.

Q. Then you are certain that is all the work you did there that morning?

A. Well, I filed a saw before I got into the tunnel—I was filing a saw before I went into the tunnel that morning.

Q. Did you work on the other side of those four bents? A. Not that morning.

Q. That morning, I mean?

A. No, sir; I did not.

Q. Did Sutton? A. No, sir; I don't think so.

Q. You were with him? A. Yes, sir.



(Testimony of Chris Likits.)

Q. You knew what he was doing?

A. He was not there what I know of; he wasn't across.

Q. Do you know whether Reeder did any work on the other side?     A. No, I do not.

Q. Did you see anyone with Reeder?

A. I think there was another man there, but I ain't sure whether he was there or not, but I think his partner was there at the time—but I ain't sure of that.

Q. You heard Reeder say that he had done no work there that morning?     A. Yes, sir.

Q. Do you know whether that is correct or not?  
[203—168]

A. Well, I guess it is, because I didn't see him and couldn't see him; it was dark there, but I heard his voice.

Q. Was the tunnel, these four bents, in the same condition when you returned as when you left them four days before?

A. I don't know. That morning, when I came in from the outside from the Kennecott end, into the tunnel, the lights were shining against the cave, toward the cave, and we came in from the daylight and it was dark back of it, and we could not see very much, and at the time we went into the tunnel the foreman, Dan Lee, says, "Hurry up and get those daps in; we want to raise those posts, and I didn't pay much attention how it was when I came in. I just went at it and tried to get those daps in.

Q. Raise what poles?

(Testimony of Chris Likits.)

A. Those four poles, those posts, that are supposed to go in between those four sets. We were going to reinforce the tunnel, them four sets, in the same shape as was done back of it.

Q. Then, so far as you could observe, there was no changes made in those four bents from the time you left them four days prior to that until you returned?

Q. There may be, I don't know. I don't know anything about it.

Q. You didn't see any changes?

A. I didn't examine or try to look for them.

Q. Did you see any changes?

A. No, I don't think so—nothing I noticed.

Q. You couldn't notice any? A. No, sir.

Q. And didn't notice any changes?

A. No, sir. [204—169]

Q. You examined the side you were working on there? A. No, sir.

Q. You didn't examine it? A. No, sir.

Q. Couldn't you see it?

A. I could see it, yes, a little bit, just from the light, from the lantern.

Q. And you couldn't see any changes?

A. I think, if I remember right, I could see that one of them laggings, they have all been dark and smoky, laying on top of the caps, I could see some of those laggings, a white streak showing up under the cap that morning. The lagging stands on the cap like this, and I see it open up a streak of white there on the lagging; it showed us that it had been moved, the white on it has shifted over.

(Testimony of Chris Likits.)

Q. Do you know whether that condition existed when you left the tunnel four days before that?

A. No, I did not.

Q. You don't know?      A. No.

Q. I am going to ask you whether you were called here as a witness from the Kennecott mines by me in this case?      A. Yes, sir.

Q. How long have you been in town?

A. Since the 13th of this month, I guess.

Q. I am going to ask you if you remember a conversation between you, Mr. Forrester and Mr. Bates in my office?      A. Yes, sir.

Q. I am going to ask you if you did not tell Mr. Forrester, Mr. Bates and myself that the reason that that fell down was [205—170] because that brace was knocked off there by Mr. Sutton?

Mr. COBB.—We object; the witness has been called by the plaintiff in this case and has given the same testimony that he has given now. He was asked fully about that and I think if they wanted to contradict him, the proper time to have laid the foundation for it was then.

Mr. BORYER.—I will withdraw the question. That is all. \*

Cross-examination.

(By Mr. COBB.)

Q. Had any precautions been taken that you could observe there to secure that roof from falling while those posts and timbers were being put in?

Mr. BORYER.—I object to that as not proper cross-examination. Objection overruled. Defend-

(Testimony of Chris Likits.)

ant allowed an exception.

Q. I will add this to it. While you and Mr. Reeder and the other carpenters were at work?

A. I didn't catch on to that very good.

Q. Had any precautions been taken, any means been taken to secure the roof of the tunnel from falling while you carpenters were putting in those timbers? A. No, not in them four sets.

Q. Not in those four sets? A. No, sir.

Q. Had you worked on the part of the tunnel that had been retimbered before you reached these four sets? A. Yes, I worked on it.

Q. Had any precautions been taken in it there to secure the roof until the new timbers were put in?

A. Yes, sir.

Q. What precautions were taken? [206—171]

A. We put in some posts from the cap to the ground down below—put in some posts there.

Q. But that wasn't done under these four bents?

A. No, sir.

Q. Had that been done would the roof have fallen down and this accident happened?

A. I don't know. I should think the roof would not come down then. I don't think it would.

Q. If the braces and posts had been put under there, in the middle, temporary posts, you think it would not have come down? A. I don't think so.

Mr. COBB.—That is all.

(By Mr. BORYER.)

Q. Who put these other posts in?

A. I think Dan Reeder was there and I and Dan

(Testimony of Chris Likits.)

Lee, the foreman.

Q. You were all working together, were you?

A. Yes, sir.

Q. And you put the posts in the other place, did you?

A. Yes, sir.

Q. It was your duty to put them in, was it?

A. We were told to do so.

Q. Now, then, I understood you to say when you were a witness for the plaintiff in this case, that the reason that this fell was because that the segment was not properly attached to the cap; is that correct? Did I understand you correctly?

A. I didn't say so; it was not properly—the joint is just as good that way as any other way providing the weight is equal strength all around; if the weight is all round equal, why the joint is just as good as any other, but the weight [207—172] wasn't there—there was more pressure on one side than the other.

Q. Then if you had put these posts up in the center as you said you had put them in the other place, what effect would that have upon the segment?

A. Well, it would hold up the cap—the post would hold up the cap.

Q. That is the piece that goes across here?

A. Yes, sir.

Q. But it wouldn't hold up the segment if it came down here?

A. No, I don't think so—the cap came down first.

Q. The cap came down first?

A. Yes, sir; she went by the segment and came down first.

(Testimony of Chris Likits.)

Q. What were you putting those posts in there for?

A. Which posts?

Q. The posts that you were cutting the daps for?

A. They were regular sets of timbers for reinforcing the tunnel.

Q. And make it safe? A. Yes, sir.

Q. Every time you put in a post it made it that much safer, didn't it? A. Yes, sir.

Q. So that each post that you put in was as a matter of fact a post of safety, was it not?

A. No, the post wouldn't save anything—it would have to be a full set to make it safe.

Q. It would be one portion of a set that you were going to make, to make it safe? A. Yes.

Q. If you put in the full set it would have been safe? [208—173] A. Yes, sir.

Q. You cannot put them all in at once?

A. No, sir.

Q. You have got to put in one at a time?

A. Yes, sir.

Q. And in putting one in at a time, each one that you put in makes it that much more safe than it was originally? A. Yes, sir.

Q. So that you were making the top or the framework of the tunnel safe, were you not?

A. Yes, sir.

(By Mr. COBB.)

Q. Those new timbers you were putting in there were part of the permanent construction of the tunnel, were they not? A. Which new timbers?

Q. The new timbers, the new bents—the new sets



(Testimony of Chris Likits.)

of timbers that you were putting in there between the old timbers,—that was to be a permanent part of the tunnel?     A. Yes, sir.

Q. And that was necessary because it was not properly built in the first instance?     A. Yes, sir.

Q. (By Juror PEDERSEN.) As I understand the construction of these segments and these posts, would the segments and the posts be of any service in supporting the tunnel until the cap was put on?

A. No, I don't think so.

(By the COURT.)

Q. Did you have that morning the timbers there ready to put [209—174] up, the set that you were making daps for—were they in the tunnel handy?

A. No, sir; they were not in the tunnel.

Q. Where were they?

A. Dan Lee had taken the measurements, the foreman had taken the measurements and gone outside. I met him going outside and giving orders to the outside foreman to cut these poles and every time we made a set of timbers, they were hard to measure, I had made a pattern to move forth and back, slide up and down on the sides and roof, and we spread that over the roof and we would get the cuts and bevel in shape, the way the tunnel was,—so they fit in.

Q. Ordinarily how long would it have taken you that morning with the men that were there working to have finished the daps and have the timbers ready to put them in place?

A. I think we could have finished that day.

Q. With that one set?

(Testimony of Chris Likits.)

A. No, that whole four sets—we could have finished that day.

Q. That one set, how long before you would have had the daps cut? I mean—

Q. Ordinarily considering the way you work and do the work and the number of men you had there, before you would have been ready to have erected and put in place the first set of timbers you were working at?

A. I don't know, there is a difference in the timber; sometimes you strike big knots in them—it's spruce timber and hard to cut; we have to cut down something like four inches, pretty near in two and have to split them out with wedges, iron wedge or something and that takes sometimes quite a [210—175] long time to cut or split up.

Q. Was it, has it been and is it, the custom to bring the timbers in and have them ready as soon as you have the daps cut?

A. It used to be they had three or four sets ready at once.

Q. That morning were the plans to have the timbers ready for you when you got the daps cut?

A. I don't know that.

Q. (By Juror CHAMBERLAIN.) Is this crew that was working inside the tunnel at this timber work under the direction of a foreman all the time?

A. How is that?

Q. Was the crew working at this timber work inside the tunnel under the direction of a foreman all the time? A. Yes, sir.

(Testimony of Chris Likits.)

(By Mr. BORYER.)

Q. The foreman was working there with you?

A. Not that morning—he just went out that morning to give the length of the posts—that is what I understand.

Q. That is, he had taken the measurement or you had taken the measurement of the post?

A. I didn't take the measurement. I guess the foreman did.

Q. He had taken the measurement of the post and he had gone to the end of the tunnel where you kept your timber for the purpose of getting the post; is that correct?     A. Yes, sir.

Q. You kept your timbers at the edge of the tunnel?

A. No, they were about three or four hundred feet from the end of the tunnel.

Q. It was out there at the end of the tunnel towards Kennecott, [211—176] was it?

A. Yes, outside the cut.

(By Mr. COBB.)

Q. Besides the carpenters that were working on this job of reconstructing the tunnel, was there any other workmen there, any other employees?

A. Yes, there was excavators there.

Q. And anybody else taking the cars out?

A. There was a foreman for the excavators.

Q. And a foreman for the carpenters?

A. Yes, sir.

Q. And was anybody in charge of the entire work, directing how the entire job was to be done?

(Testimony of Chris Likits.)

A. Yes, sir.

Q. Who was that?      A. Mr. Forrester.

Q. He had general supervision of this entire job?

A. I think so.

Q. The carpenter foreman was under him?

A. Yes, sir.

Q. And the excavator foreman?      A. Yes, sir.

Q. And the car men?      A. Yes, sir.

Q. He was in charge of the whole job of constructing this tunnel?      A. Yes, sir.

Q. (By Mr. BORYER.) By excavators you mean the men that were taking the muck from the cave-in prior to that?      A. Yes, sir.

Witness excused. [212—177]

**[Testimony of J. W. Forrester, for Defendants.]**

J. W. FORRESTER, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. What is your name?      A. J. W. Forrester.

Q. Where were you employed on the 7th day of August, 1911?      A. Chitina.

Q. How long had you been employed there?

A. From the 13th of July.

Q. Up until the 7th day of August?      A. Yes, sir.

Q. And including the 7th day of August?

A. Yes, sir.

Q. What work were you doing there?

A. Retimbering the Chitina tunnel.

Q. I hand you Defendants' Exhibit #6 and ask

(Testimony of J. W. Forrester.)

you to explain fully and in detail to the jury just what work you were doing and the manner of re-timbering the tunnel and the manner in which you proceeded. Explain fully.

A. These sides here represent the old sets, the sets made out of round spruce timber, native timber, the entire set, the post and segment, all the way around; these were put in originally four feet apart and I was putting in 12x12 timbers halfway between each one of the old sets.

Q. (By JUROR.) What you were putting in was a complete set also?

A. Yes, sir; it was put in differently from that set but it was a set of the same arch exactly as the set shown there. We were also changing the mudsills. The mudsills under the old sets were made out of hewn timber and we were taking those out and excavating deeper and putting in 8x18 mudsills. [213—178] That is about all there was to the work we were carrying on, in a general way, at the time.

Q. You left the old sets there?

A. Yes, we left the old sets there and put in the new sets in between to reinforce and make the tunnel stronger.

Q. What was your object in doing this work?

A. To make the tunnel safe.

Q. Now, then, tell the jury how far you had proceeded up to about the 7th day of August, 1911, the time of the cave-in.

A. We had worked up to a point within four sets of where the tunnel had caved in before I went to

(Testimony of J. W. Forrester.)

work at it—that would be a space of 16 ft.

Q. Then you had retimbered the tunnel from the end toward Kennecott up to within four bents of where the other cave-in happened? A. Yes, sir.

Q. What work was done on these four bents, if any?

A. I had taken out the old mudsills—on one side the new mudsills had been put in.

Q. On one side—on which side do you mean?

A. Looking—standing in the Kennecott end and looking towards Chitina it would be on the right hand side.

By the COURT.—Explain which way the mudsills run.

A. The mudsills ran parallel with the tunnel—each mudsill four posts, 16 ft. long.

Q. You had taken out both mudsills and you had put one mudsill in? A. Yes, sir.

Q. Now, then, what would be the next step after putting that mudsill in? [214—179]

A. The next step after putting the mudsill in would be to wedge up the posts on that side, make them tight.

Q. There would be four upright posts then in that mudsill? A. Yes, sir.

Q. Had those posts been wedged up?

A. Yes, sir.

Q. By whom was that work done?

A. By Dan Lee, the foreman and his gang.

Q. Whose duty was it to wedge up those posts?

A. It was the duty of the timber gang, Dan Lee's gang.



(Testimony of J. W. Forrester.)

Q. Who composed that gang, if you know?

A. I don't remember. I can't recall all of them—I can name a few of them.

Q. Name those you know.

A. There was Dan Lee, Chris Likits, John Sutton, John Nord, and Billy Wilds—there might have been one or two more; I don't remember now.

Q. I believe you stated that the first thing to do after you had gotten your mudsill in would be to brace the upright post; is that correct?

A. After we put the mudsill in, we wedge the post up.

Q. You mean the four posts?      A. Yes, sir.

Q. It was necessary to take out the mudsills for the purpose that you were trying to accomplish in this work, was it?      A. Yes, sir.

Q. After you had your posts wedged up, what was your next step?

A. After we put in the mudsill and wedged up the old post, the next step was to put up the new post.  
[215—180]

Q. What steps, if any, had been taken to put up the new posts?

A. Well, we had gotten this far—Dan Lee, the foreman, that day was going to put up the new sets and he had gone in there that morning and measured the first set of posts and had gone outside to give the measurements to the framework foreman out in the yard.

Q. Had any of the new posts on the right-hand side been put in?      A. No, sir.

(Testimony of J. W. Forrester.)

Q. Had any changes been made in the top of the tunnel or the segments?     A. At what time?

Q. At any time.

A. Yes, we had put in some work, several different times, to support the roof of the tunnel, when it showed signs of weakness.

Q. Had any steps been taken on this particular place, these four bents?

A. Well, there had in this way—I timbered it in such a way or braced it in such a way that I thought to avoid any accident that might occur. It showed no signs of weakness at all that could be seen.

Q. What had you done?

A. I nailed a 3x12 plank, spiked a 3x12 plank across the segments to keep them from separating apart, and braced it from the middle of that plank down on the posts, and put a round timber that caught half on the wall-plate and half on the top of the post, to keep the wall-plate or the post from coming in at the top, and I also had taken a 3x12 plank and spiked that to the last span and segment to keep the segment from tipping forward and letting the [216—181] lagging drop through.

Q. I would ask you, who did that work.

A. Dan Lee and his gang.

Q. Was Mr. Reeder one of his men?

A. He was one of his gang; yes, sir.

Q. Was he working there at the time?

A. He was there at least when part of this work was done.

Q. I wish you would show the jury on that ex-

(Testimony of J. W. Forrester.)

hibit that you have, Defendants' Exhibit 6, show and explain to the jury just what you did.

A. This view here would be a view of the side of the tunnel—if you were standing down in the middle of the track, in the middle of the railroad track and looking up at it.

Q. I ask you to stand down here at this end and explain it to the jurors on this end and then go forward and explain it to the jurors on the other end, so they can all see it.

A. These caps were round timbers—

By Mr. COBB.—Is this looking at the top of the tunnel?

A. Yes, at this portion where this brace is in, would be looking up at the segments.

Q. Straight overhead?

A. No, overhead in the side of the tunnel. These caps were round timbers, probably anywheres from 8 to 12 inches in diameter, and these lagging were cut 4 ft. long, and they met on top of these caps and when these were standing plumb, it wouldn't take very much of a brace to hold it there one way or the other, so I put up this brace and nailed it up there and brought it back here and spiked it down here, so as to keep that last set from tipping forward, to keep it from moving—that was the object in putting up that brace. [217—182]

Q. Now, repeat that.

A. You can see the object of the thing—it held that segment; as long as that stood plumb, why it didn't take much of a brace one way or the other to hold it.

(Testimony of J. W. Forrester.)

That brace was spiked up there to keep it from tipping forward and letting this lagging, which met on the top of these round caps, would keep that from starting down over the round timber or keep it from giving way.

Q. (By JUROR.) Was that a new structure or a new segment you put in there or the old ones?

A. These were all the old timbers—the only new piece of timber shown in that drawing was that 3x12 brace nailed there. The rest were old timbers.

Q. (By JUROR.) That was put there to hold that until you got to it? A. Yes, sir.

(By Mr. BORYER.)

Q. Now, I will ask you why you put that brace in there.

A. I put it there to keep that last segment from tipping forward and letting the roof fall down.

Q. You are familiar with that kind of work?

A. I had done but little tunnel work before I took this job but I have done a good deal of timber work of different kinds.

Q. That was timber work, was it not?

A. Yes, sir.

Q. I will ask you, in your opinion, what would be the result of taking that timber off, which you put on as a brace—if that timber were taken off?

A. I think if it was taken off it would leave that free to [218—183] fall, and if the dirt was working in any way whatever, the natural tendency would be for it to go forward and it would let the roof come in, and if one would move, the others would

(Testimony of J. W. Forrester.)

naturally follow it right down.

Q. I will ask you if you examined the timbers as to their position after the tunnel had caved in?

A. I did, yes, sir, a good while afterwards—I did when we continued the work and dug the muck out.

Q. You dug the muck out from these timbers?

A. Yes, sir.

Q. And took the timbers out?      A. Yes, sir.

Q. You know the position that these timbers were lying in, do you?      A. Yes, sir.

Q. I will ask you if from your observation of the timbers and the general work as you found it after the tunnel had caved in, the position of the timbers, what in your opinion caused the cave-in?

A. In my opinion it was taking that brace off.

Q. You had put that brace on there for the purpose of holding it up?      A. Yes, sir.

Q. Now, I will ask you to tell the jury the position that you found those timbers in, upon which you base your opinion.

A. Well, when we dug the timbers out, the lagging was lying down in here and it was below these caps, and the theory I formed was that the segment and cap tipped forward and let the roof come straight in and this naturally followed. The [219—184] lagging was lying below these segments and these caps. When the tunnel caved in the posts that were standing on the mudsill, where we had the mudsill in, remained standing, they didn't cave in at all, but on the other side, the posts came in, but the lagging



(Testimony of J. W. Forrester.)

was lying almost invariably below the cap and these segments.

Q. Now, then, I will ask you if you did any other work there on these four bents, other than to put this brace up?           A. Yes, I did.

Q. What other work did you do?

A. I put across 8x10 struts from one post over to the other and wedged them in so the posts couldn't come together, and they were in on all the bents that hadn't been reinforced, and on the last bent I put in this form of timbering here, with that 3x12 spiked across there and braced up this way so that those couldn't spread apart nor come together, and this log was about 10 inches in diameter and caught the wall-plate and the top of the post, across on both sides. These 8x12 struts were wedged in between the posts there and this brace still remained in here on both sides, the one where the mudsill was in and the one where the mudsill had been taken out.

By the COURT.—Repeat that.

A. This 3x12 strut was across there and held these segments from either separating out so that cap could drop through or coming together. This was braced down this way to tie it and to steady this here and this log strut was across, caught both the wall-plate and the top of the post. This 8x12 was wedged across here to keep them from working [220—185] in,—those braces were in here to support the post while we took the old mudsill out and put the new one in—to keep them from falling out.

Q. Did this plank come clear across?



(Testimony of J. W. Forrester.)

A. Yes, sir. You can follow this line here—that represents the line of muck. The tunnel was originally frozen. There was no muck on the outside; on your timbers here, directly around this set, it was bare—there was no muck directly around that set. I can show you, for instance, this set of timbers here, that set there. That is the last end set and that muck had worked out until it was across something like that, the line would cut about there, like that. There was muck behind the joint of the segment and the wall-plate and the post, but there was no muck behind the joint of the cap and the segment, up there, but this lagging all the way down across here had wedged because the muck came ahead of this joint here. This was where it gave way here.

Q. Now, who did this work that you are just describing?

A. The work was done by Dan Lee and his gang, and there was some work done in there by Shorty McFarland and his gang.

Q. By the carpenter gang? A. Yes, sir.

Q. Then it was the carpenters who did this work, was it? A. Yes, sir.

Q. It was their duty to do this work?

A. Yes, sir.

Q. By that I mean that that was the nature of their employment. A. Yes, sir.

Q. Had you given any instructions to the men regarding looking [221—186] out for their safety or otherwise there?

A. Yes; I had given implicit instructions to the

(Testimony of J. W. Forrester.)

foremen to look out for themselves and to look out for their men, and I think I had cautioned every man on the job.

Q. You realized that it was work that was more or less dangerous?     A. Yes, sir.

Q. Did you give any instructions about the removal of braces or anything there?     A. Yes, I did.

Q. What, if any, instructions did you give?

A. I told Mr. Estabrook, a man I had helping me and looking out for things generally, I told him that there never was any timber to be removed out of the tunnel or any brace taken out without my or Dan Lee's sanction, and I told him to look out for it.

Q. Was Mr. Estabrook working there at the time?

A. Yes, sir.

Q. What was he doing?

A. He was helping me—he was looking out for things generally watching the timber, etc.

Q. I will ask you if there has been any other cave-in or trouble with this tunnel since it has been retimbered.     A. No.

Q. When were you in the tunnel last prior to this accident?     A. The evening before.

Q. What time in the evening?

A. Quitting time—either at 6 or 6:30, I couldn't say which. I don't remember whether we were working ten or eleven hours at that time. [222—187]

Q. The accident happened in the morning about what time?

A. I think it was about 7:15 or 7:30.

(Testimony of J. W. Forrester.)

Mr. BORYER.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. If you will just stand up there a minute. Now, that represents the timbering that you had on the last bent, next to the old cave-in?

A. Yes, sir, on the very last bent.

Q. There was no such timbering as is indicated here on the other three bents.

A. No, with the exception of these 8x12 struts.

Q. To keep the posts from coming in?

A. Yes, sir—and this brace ran back here.

Q. A longitudinal brace? A. Yes, sir.

Q. Were they on the segments or on the posts?

A. They were nailed on the segments of this last bent and ran on down past the segments into the wall-plate.

Q. There was no such timbering as is indicated in this drawing except on the last set of timbers next to the cave-in, with the exception of the longitudinal brace and the braces that upheld the posts while the mudsills were being put in there, that is correct?

A. Yes, sir.

Q. There was no such braces as that put on the two middle sets of timbers? A. No, sir.

Q. Now, the timbering that you put up, even on this last brace, or this last set of timbers, did not strengthen the roof? [223—188]

A. Yes, sir, I think they did.

Q. Except, I will add, that it might prevent it tipping forward or the timbers coming apart?

(Testimony of J. W. Forrester.)

A. Yes, and it kept the last bent from separating apart and letting the cap fall through.

Q. It didn't in any way tend further to support the timbers except to prevent them separating apart?

A. The 3x12 plank spiked acrossed prevented the segments separating apart and letting the cap through and the brace down along the segments prevented the last bent from falling forward and letting all of them fall down.

Q. It didn't, however, add anything to the strength of the caps? A. No, sir.

Q. Did you tell the jury your age?

A. 25 years old.

Q. How long have you been in the employ of the defendant companies? A. Since April, 1908.

Q. What experience in tunneling work had you had prior to this? A. About six months.

Q. Where? A. In Seattle.

Q. You stated that you were engaged in the work of making this tunnel safe? A. Yes, sir.

Q. Why was it unsafe?

A. It was unsafe on account of the timbers being weak, faulty construction.

Q. Now, there is one matter that you can tell us about—what was the length of the tunnel? [224—189]

A. About 450 ft.

Q. Was the construction through the entire length of the tunnel as it was originally built the same?

A. As it was originally built, I suppose it was—there was about 185 ft. of it that I never examined.

(Testimony of J. W. Forrester.)

Q. That you never saw? A. No.

Q. All of it that was left there was the same sort of construction that has been described here?

A. Yes, the same general plan of construction.

Q. The 185 ft. that had given way before this cave-in, where did that begin with reference to the four bents that gave way at the time of this particular accident on the 7th of August?

A, I couldn't say. I wasn't there when it occurred.

Q. Do you know where this cave-in was?

A. Yes, but you asked me where it began—I couldn't say where the trouble started.

Q. I mean, where did it begin with reference to locality, and where did it extend to?

A. It started in about 50 ft. from the Chitina end of the Chitina portal of the tunnel and extended about 184 ft. towards the Kennecott end of the tunnel.

Q. How far did that 184 ft. bring it from these particular four bents that gave way on August 7th?

A. Brought it right up against it.

Q. At that time they had retimbered all of the tunnel that had not caved in with the exception of these four bents? A. Yes, sir.

Q. That part of the tunnel up to that time had never given way? [225—190] A. No, sir.

Q. But it did give way, the same construction, right up next to it? A. Yes, sir.

Q. Going through this hill, is there any irregularities in the height or different pressure on that tun-

(Testimony of J. W. Forrester.)

nel? A. You mean the contour over the hill?

Q. Yes. A. Yes, there is.

Q. Dan Lee, you say, was the foreman of a certain carpenter gang there? A. Yes, sir.

Q. Where is Dan Lee?

A. I don't know where he is now.

Q. Has he gone out? A. Yes, sir.

Q. Dan Reeder and Chris Likits are here?

A. Yes, sir.

Q. Where is John Nord?

A. He is in Norway.

Q. Where is John Sutton? A. Dead.

Q. Where is Wilds? A. I don't know.

Q. How many other gangs of carpenters were at work on that job? A. One other gang.

Q. McFarlands? A. Yes, sir.

Q. Did you see Dan Reeder the day before—were you in the tunnel then? [226—191]

A. I don't recall seeing him the day before in the tunnel. I do not recall seeing him any place the day before.

Q. Do you know where he was at work three or four days before that? A. I can't recall.

Q. You know he hadn't been in that tunnel, don't you? A. No, I do not.

Q. You don't know that? A. No.

Q. You had entire charge of this work, did you not?

A. Under Mr. Wernicke's supervision.

Q. He was your superior? A. Yes, sir.

Q. Who is Mr. Wernicke—what was he?



(Testimony of J. W. Forrester.)

A. Division engineer.

Q. You had charge of this entire force?

A. Yes, sir.

Q. The men who were doing the work of repairing and reconstructing that tunnel?      A. Yes, sir.

Q. Now, I wish you would repeat to the jury the instructions you gave there to the men about their safety.

A. I told the foremen to look out for themselves and men. All the time they were working in that tunnel they realized that they were taking more or less chance.

Q. Is that all the instructions you gave them?

A. I don't recall now. I probably gave them various instructions in regard to looking out for themselves.

Q. Did you ever go in there and examine this work ahead to see what was necessary to be done in order to make it safe? [227—192]      A. I did.

Q. And take the proper steps to that end?

A. I did.

Q. And yet you say all the instructions you gave them were to look out for themselves?

A. I gave them various instructions in regard to timbers, to put up, to strengthen the old work, so they could carry on the work of retimbering.

Q. Who was Mr. Estabrook, that you said you told to look out that no timbers intended to secure the safety of the men were removed with yours or Dan Lee's sanction—what was he doing, what was his business out there?

(Testimony of J. W. Forrester.)

A. He was on the pay-roll as a rodman, I believe.

Q. Did you keep him in the tunnel to see that that was done?

A. He was in the tunnel practically all of his time.

Q. Was he in there at the time of the accident?

A. No, sir; he was not in there that morning.

Q. Did you issue those instructions to all of the men, not to touch any of these braces that you had ordered put up, at any time?

A. I issued them to the foremen and to Mr. Estabrook.

Q. That was all?

A. I couldn't say that I instructed the men to that effect, but I think no doubt I did.

Q. You think you did?

A. I think, undoubtedly, I did.

Q. You don't know for sure?

A. No, I couldn't swear to it.

Q. You said a while ago that Mr. Reeder was undoubtedly there [228—193] when a part of the work on these four bents that you describe was done. What day was that?

A. This work was being carried on right up to the time of the accident, and I know that Mr. Reeder was working in there, was working in this gang that was doing this work, and he testified that he had helped put in those struts between the posts, so that would be a part of it that he was there on. I couldn't specify any particulars.

Q. Between these particular posts?

A. Yes, sir.

(Testimony of J. W. Forrester.)

Q. Wasn't it the other posts back of that?

A. No, sir.

Q. You are sure of that?

A. That is the way I understood his testimony; I am not sure of it.

Q. You heard him say that he hadn't been in there for four or five days at least?     A. Yes, sir.

Q. Do you mean to question the correctness of that statement?     A. No, sir.

Q. You heard the testimony of some of the witnesses here about these uprights being placed in the middle of the tunnel to support them as the work progressed, prior to this time?     A. Yes, sir.

Q. Did you order that done?     A. Yes, sir.

Q. In each instance?     A. Yes, sir.

Q. And you didn't order it done for this particular place?     A. No. [229—194]

Q. If it was, it was disobeyed?

A. It was not ordered done.

Q. (By Mr. BORYER.) Why didn't you order it done?

A. The timber at that point showed no signs of weakness whatever, and I didn't consider it was necessary.

(By the COURT.)

Q. Explain to the jury the comparative size of the mudsills of the old and new, and the object of putting in the mudsills.

A. You can see the idea of it here. This represents the cross-ties. We threw down a 4x10—

Q. The ties on which the railroad track rested?

(Testimony of J. W. Forrester.)

A. Yes, sir. We threw down a 4x10 right at the bottom and against the ends of these ties we notched this post here before we dapped or cut this strut, this brace off, at the shoulder there and shoulder here, and before we removed the old mudsill at all, we put those in and drove them in as tight as we could, and then we went to work and dug, made an excavation as it is shown here, took the old mudsill out and put the new mudsill in. The old mudsills were made out of about, I think they were supposed to be, 10x12.

Q. And the new ones?

A. 8x18, and laid down flat.

Witness excused. [230—195]

**[Testimony of F. H. Estabrook, for Defendants.]**

F. H. ESTABROOK, a witness called and sworn in behalf of defendants, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. What is your full name?

A. F. H. Estabrook.

Q. Where were you working on or about the 7th day of August, 1911?

A. I was working at Chitina.

Q. How long had you been working there?

A. Since the 15th or 16th of July, 1911. I don't remember the exact date—one of those two dates.

Q. Under whom were you working?

A. Under Mr. Forrester.

Q. What was your position under Mr. Forrester?

(Testimony of F. H. Estabrook.)

A. I was rodman and did general work for him outside of rodding—that is, work usually done by a rodman, in that kind of a job.

Q. I will ask you, were you working in and around the Chitina tunnel during that time?

A. In and around it, yes, sir.

Q. I will ask you whether Mr. Forrester gave you any instructions in regard to warning the men; if so, tell the jury what instructions, if any, he gave you?

A. Well, one morning—I don't remember the date; it was some time prior to this accident—the men were engaged in putting up some brace, I think it was the time that these cross-struts were put in, and I wouldn't be sure how he came to caution me, if I ever saw anybody removing these to report it at once—his idea was that he might be off the job at that time, and he didn't want them removed without his [231—196] sanction or that of the carpenter foreman; that was the way I interpreted the order.

Q. Were those instructions for you or were they given to you to advise the men?

A. Why, they were just given to me, to watch out for the removal of the timbers and so on.

Mr. BORYER.—That's all.

Cross-examination.

(By Mr. COBB.)

Q. You say just given to you alone, to watch out?

A. Yes, sir.

Q. And you failed to watch out?

A. I wasn't in the tunnel the morning that this

particular thing happened.

Witness excused.

Defendants rest.

Testimony closed.

**[Proceedings Had on Motions for Directed Verdict.]**

The jury having been excused—

By Mr. BORYER.—At this time I desire to file a motion for a directed verdict. They are separate motions of the Katalla Company and the Copper River & Northwestern Railway Co. (Reads them to the Court.)

By the COURT.—The motions are denied in each case, and exception allowed. I have these two questions in my mind that I will instruct the jury on, and it may be that I will have occasion to instruct the jury that there is not sufficient evidence for the defendants to be held as common carriers. I don't know about that. (Jury returns.)

After argument by counsel the Court instructed the jury as follows: [232—197]

**INSTRUCTIONS OF THE COURT.**

Gentlemen of the Jury:

For a moment, in your mind's eye, go back to the 7th day of August, 1911, and I will state to you what I believe to be the law, which you will be obliged to follow under your oaths in this case.

You are first instructed that an employer of labor is obliged and bound to furnish a reasonably safe place in view of the circumstances of the labor or the work to be done, the surrounding circumstances, and maintain it as a reasonably safe place for the em-



ployees to work in.

It is equally true that an employee, a laborer working for another, assumes all the ordinary risks, dangers and hazards incident to that work, which he knows and comprehends, or which a reasonably prudent man, placed in his position, could or should have known, as a reasonably prudent man. That is to say, in this case, a man placed in the position of Reeder, a man of his age, of his experience, of his intelligence—what a reasonably prudent man would have done in his position.

Taking those two broad principles of law, your duty, then, will be to decide in this case, what was the cause of Mr. Reeder's injury, about which there is no doubt or no contention—that is, the extent of the injury or accident may be a question for you,—what was the real, proximate cause of his injury.

In my opinion, law is common sense. We may differ sometimes as to what is common sense, the broad term,—so sometimes we may differ as to the law. Since I believe it to be founded on common sense, I am going to try to take you along with me in the [233—198] reasoning of the law, as well as giving you the law in this case.

It has been, it seems to me justly, held that if the proximate cause of an injury such as this, was on the part of the employer of the labor, that the employer is liable. It has been held, upon the other hand, that if the proximate cause of the injury was upon the plaintiff himself, Mr. Reeder in this case, or upon one of his fellow-workmen who were working with him, and through no fault of the defend-

ants, then he could not recover.

To illustrate what the law believes to be correct and what is common sense, I will give you two illustrations, founded upon two cases.

Imagine, if you will, that two men are working at this table, one facing this way and one this way and two men similarly working at that table over there, say upon tin or iron plate ware. One of the workmen would be standing with his back to an alleyway 10 or 12 feet wide and the other facing it. That it was the duty of those employed to stand here and do their work and perform their duties. While he was so working, two other men from some other part of the same room came along with a truck, we will say, a four-wheeled low truck, with an ordinary handle, with a cross piece at the end, that you see upon trucks around railroad freight stations outside, where the wheel works very easily under the first axle. And while they were coming in with a load of tinware that was used upon the table in the ordinary course of business, one of the wheels, we will say, dropped into a little hole in the floor, a hole sufficient, a hole sufficiently large with the load upon it to stop the truck for a moment, and the man at the tongue handle, or whatever you may call the steering apparatus by which he was pulling, kinder [234—199] wiggled it as a man naturally would, attempting to pull the load from the hole, with the other man pushing behind the load. That while he was so wiggling and pulling and the other pushing to get it from the hole, a lot of tin or iron ware fell off the truck and injured this first man standing here with his back

to that load and to that hole in the floor.

Now, in that case, altho' the plaintiff there and the boy or man standing here might have known of the hole, it is the law and was so held that even though he knew that, he did not as a part of his employment there have a right to assume or anticipate that he might be injured in the way he was by reason of that hole. That by reason of that hole being in the floor it was the duty upon the employer of these men in that room to have remedied that hole and that, altho' probably the wiggling of the tongue on that load at that particular time caused the tinware to slip off the truck, the real cause, the proximate cause of that injury, was the defect in the floor.

The case of the opposite result, in which the actions of a fellow workman exonerated an employer of labor from an injury was that in which a common derrick was used, which consists, as you all know, I presume, of a boom and a mast, the mast being the upright piece and the boom goes off at an angle. In that instance men were employed to erect the boom and mast and when they were about completed, the base, which would probably be a long piece of wood, depending of course upon the size, length, etc., of the derrick, probably we will say the length of that rug and in dimensions proportionate to hold the load it was calculated to hold—that piece of wood had been placed in position [235—200] and holes bored, through which iron bolts of sufficient size were to be put and the nuts screwed down, of course, to hold it in position. For some reason, either the bolts had been mislaid or had not been completed or something,

on the completion of the work on a certain day, they walked away without putting those bolts in; that was to be left to be completed on a subsequent day but before the derrick was to be used.

Now, it happened that the engineer who had control of the machinery running that derrick knew that, as well as the foreman and the man who was injured. The next day the foreman, who was a fellow-servant to the injured man, ordered an attachment to be made to a piece of stone and the engines to be started and the stone lifted by that derrick. The first pull did not succeed in lifting the stone. The foreman told him to go ahead and lift it; anyhow, he made another pull and of course the bottom of the derrick, not being fast upon the resting piece as it should have been, it very naturally buckled out and gave way at the bottom and the boom of the derrick hit the plaintiff and injured him.

Now, the company in that case was held not liable because they claimed that the proximate cause in that case was the negligence of the foreman who knew that the bolts were not put in there and the company had done all they could to prevent them going ahead and using that derrick until it was fixed. That that was a risk that the company could not in reason have apprehended would happen. They expected that the men would do what their good common [236—201] sense would tell them to do, and they had no right under those circumstances to anticipate that a man would so far forget and fail to do his duty as to start up and use a derrick before the bottom was fastened, and the man in charge in the erec-

tion of the derrick had ordered them not to so use the derrick.

Now, in this case you have got to deal with the tunnel, with the tunnel as it existed on August 7, 1911.

You must realize under the uncontradicted and admitted evidence in the case that it was a hazardous work. You have got to realize, then, that Reeder, so far as the evidence shows you, and I want you to go on the evidence all the way through, not conjecture and guess, but just take the evidence that has been admitted in this court, would know and did know the hazards and incidents and risks of the work, so far as the evidence shows.

Do not let what I have said there be misconstrued to mean that I am telling you what Mr. Reeder knew. I want you to take the evidence and then find what or how much Mr. Reeder did know of the conditions existing in the tunnel at the time of the accident—that is the question that you gentlemen must ultimately find in this case, not what I think or what the attorneys think or what Reeder himself thinks, except so far as it helps you reach a conclusion as to what he knew from his evidence as given in the case.

Taking that into consideration and then finding out what the duty of the employer was, the duty of either one of them, as you may find in the case, with reference to the work going on there that morning, and then discover which [237—202] or what was the cause of that accident. If the cause of the accident was one which Mr. Reeder knew, understood, comprehended or a reasonably prudent man of his age,



intelligence, experience and all that should have known, and through no fault then of the defendants, why then Mr. Reeder of course could not recover.

Or if you should find in this case that Mr. Reeder knowing all the conditions up there at that time, comprehended them, knew them, and that the immediate cause, the proximate cause of that injury as I have tried to describe to you, was the tearing off of a brace up there on the part of one of his fellow-employees, not known or directed by the company, which they could not anticipate, if that was the cause of that injury, then of course Mr. Reeder could not recover. It would be the act of his fellow-employee. Or if the accident happened through some negligence on the part of Reeder himself, he could not recover.

But if, on the other hand, taking into consideration what Reeder did know, comprehend and understand about the work and his employment there, there still was a negligence on the part of the company that he did not know, comprehend and understand, or as a reasonably prudent man, put in his place, could not have known, comprehended or understood, then the liability would be on the company.

If you find in this case that Mr. Reeder is entitled to recover, then you have the right to consider and must consider the question of damages. An employee injured through the fault or negligence of the company and not of himself is entitled to receive, what again would be common [238—203] sense in my opinion, under the law, and is the law, the expenses he naturally sustains by reason of that injury. The elements most natural are those by way of medi-



cal attendance, so far as the evidence may show in this case that any was given, not paid for, or which Reeder would be obligated to pay by himself, eliminating of course all that had been paid for him, gratuitously. Next the loss of time, if any is shown in this case, by reason of this accident. Reeder if entitled to a verdict in this case should receive compensation for the loss of time, for his occupation in life so far as it has been shown under the evidence and in so far as he has not been compensated by the defendants or either of them or by reason of his work in other capacities since.

By way of illustration: If a man is earning \$150 a month and after a certain injury is able again to go to work and earns \$75, why then the measure of damages would be the difference between \$75 and \$150 or \$75.

Another element is that of pain and suffering. The law assumes that whenever a man receives a physical injury of certain kinds that certain mental anguish and suffering, which is not only physical but mental, follows. That is to be taken into consideration by the jury, basing your findings upon the physical injury, as to what might have been the mental anguish and pain connected with it.

The next element to be considered in damages of this sort in any case is that of future incapacity, in so far as the evidence may show it and there again it is not a matter of conjecture for you, it is a matter for which you are to take the evidence so far as it is given in this case, to [239—204] show, in the event that you consider that element or find it

necessary in this case. On that evidence, if any is given, you have a right to compensate an employee for future incapacity that has resulted from the injury.

In this case there are two defendants sued. It will be necessary for you in case you find against the defendants, or either of them, to find whether one or both of the defendants are liable in this case, and you must find that upon the evidence in the case.

It is your duty in this case to weigh and consider fairly all the evidence that has been given here in the case. You are not at liberty to just say, "I will take some of it and I will throw some of it out. I will consider some and I won't the other," unless you have a legitimate reason for it under the instructions I shall give you.

If you believe that evidence is untruthful or is contradicted by other evidence, facts or circumstances, then you would have a right and it would be your duty to not consider that evidence, but all evidence that you believe to be truthful in this case you must consider and give its proper weight. It is not a place for you gentlemen to put up your own theories of what the law ought to be or what the remedy ought to be, or what your verdict ought to be in this case, unless it is founded absolutely upon the law that I gave you and the evidence that was given in this court, for this reason: If I make a mistake in the law as I have given it to you this morning, both sides have their remedy and would be protected. They can appeal to a higher court who review what I have said, give it their earnest attention, and if I

have made a [240—205] mistake, a new trial is granted or the error corrected.

If when I ask you gentlemen under your oaths to take the matter up in conformity with the law and the evidence you fail to do it, there is no way of remedying it. We don't know whether you have followed it or not; if not, the best that can be said for you is that you have violated your solemn oaths which the citizenship and the very foundation of our country depends upon, but there is no telling how far you have injured one side or the other in the case, that can never be remedied. Therefore, do not take lightly, as I am sorry to say some jurors do, that which I give you as the law and then go into your jury-room and commence telling your opinion of what the law is, which may be at absolute variance to what I have stated, or in direct disregard of it. Think well of what I have said to you, and if you don't understand it or there is any question about it, make your requests in writing and I will instruct you further. Do not make law for yourselves, gentlemen—do not stultify yourselves and your duty as jurors by doing that.

In weighing the evidence of the witnesses you should take into consideration the interest they have in the case, their apparent candor or evasion in giving their evidence, the probabilities or improbabilities of their story, and another thing, the opportunity they had of knowing and seeing the facts about which they testify before you here. In this case I am going to ask you particularly to do what I believe is a reasonable thing to ask of any juror when you go

into your jury-room, so we may not have mistrials. I do not believe it is particularly manly for a juror to go into a jury-room [241—206] and say to eleven other men, "I have made up my mind, gentlemen, what I am going to do in this case," write out ten or twelve ballots and put them in your pocket and say, "Whenever you vote, here's mine." I say that for this reason—every other man is intelligent and has some degree of manhood, of ability and reason, and is to be respected to a certain extent. It may be that you have a superior mind to remember, grasp and understand things, and may be of great assistance to the other eleven men; therefore it is your duty to assist them as far as you can and so far as they will allow you to do it, in discussing what the evidence is in this case and in applying it to the law. These attorneys may have difficulty as you have seen in telling you what they think the law is in this case, although they have been almost unanimous—there is a unanimity in what they said was the law. They would have difficulty in applying the facts to the case possibly, even if they were not biased for their clients. So you may have honest differences of opinion when you get into the jury-room about facts. One might remember that a mudsill was in such and such a place, so wide and so thick and the other might remember it honestly another way and yet when you call his attention to the fact as you remember it, that you remember it the other way for a certain reason, he might immediately coincide with you, whereas if you go at it in a spirit of more or less animosity and bitterness, you might antagonize

the other man and he doesn't want to listen to you.

I say that in this case and you can apply it to any other case you sit in. Be fair to each other, and thereby you will be fair to the Court, the clients and the attorneys on both sides. [242—207]

I don't mean by that, however, that a man must forego or relinquish his honest conviction. Far be it from me to even say or intimate in any way, shape or manner such a thing as that. When you have been fair to each other and yourselves and reached an honest conclusion and conviction in the case, that is your manhood, and in so far as it cannot, after all efforts have been made, be changed and you are conscientious, then that is your verdict, and I do not wish to interfere with that.

You understand when you have reached a verdict in this case that you will sign the form of verdict, and I am going to give you three, on which you unanimously agree.

In conclusion, I will say what I might well have said earlier in these instructions, that when the issues are made up, such as they are in this case, by a complaint, answer and reply, that it devolves upon the person affirmatively alleging a thing to sustain it by a preponderance of the evidence. When the thing is affirmatively stated, such as the complaint in this case, setting out the causes of action—it is not affirmatively stated when it is simply denied in the answer—those things which are set up then in this case in the complaint affirmatively, it would devolve upon the plaintiff to prove by a preponderance of the evidence. Those which are set up in the affirmative



answer in this case stand in the same position as the statements in the complaint and reply on the part of the plaintiff—therefore, what is set up affirmatively on the part of the defendant would be upon him to establish by a preponderance of the evidence.

You may swear the bailiffs. [242A—208]

**[Certificate of Official Stenographer to Transcript  
of Testimony, etc.]**

I do hereby certify that I am the official Court Stenographer for the Third Judicial Division, Territory of Alaska; that as such I reported the proceedings in the above-entitled cause, to wit, Daniel S. Reeder vs. Copper River & Northwestern Railway Co. and the Katalla Company; and that the above is a full, true and correct transcript of the shorthand notes taken by me at said trial.

Dated at Valdez, Alaska, this first day of July, 1913.

I. HAMBURGER. [242B]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, and KATALLA COM-  
PANY,

Defendants.



**Order Allowing, Settling and Certifying Bill of Exceptions.**

It appearing to the Court that the defendants have prepared and duly served upon the attorney for the plaintiff herein, within due time, a proposed Bill of Exceptions, and the Judge of said Court having duly designated Saturday, the 19th day of July, 1913, as the time at which he would settle the Bill of Exceptions, and both parties having been informed of the time for settling the Bill of Exceptions as designated by the Judge, and the said matter coming regularly on for hearing for the purpose of settling the said Bill of Exceptions on the 19th day of July, 1913, and attorneys for both parties having been present:

It was thereupon, and is hereby ordered that the proposed Bill of Exceptions be allowed, the same shall be and is hereby settled and allowed as a Bill of Exceptions herein and presented to the Judge of this Court for his certificate.

And it further appearing to the Court that said proposed Bill of Exceptions conforms to the truth and is in proper form, it is therefore ordered that the said bill is a true Bill of Exceptions, and the [242C] same is hereby approved, allowed and settled, and ordered filed and made a part of the record of said cause, and that Plaintiff's Exhibits "A" to "H" inc., and Defendants Exhibits 1 to 6, inc., the originals be sent to United States Circuit Court of Appeals, 9 Circuit, because of their character cannot be inserted in this Bill of Exceptions.

Done in open court this the 19th day of July, A. D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [242D]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Certificate to Bill of Exceptions.**

I, Fred M. Brown, Judge of the above-entitled court, do hereby certify that the above and foregoing Bill of Exceptions in the above-entitled cause is a true bill of Exceptions, and the same has been approved, allowed and settled, and ordered filed and made a part of the record of said cause, and that Plaintiff's Exhibits "A" to "H," inc., and Defendants' Exhibits 1 to 6, inc., the originals be sent to

United States Circuit Court of Appeals, 9th Circuit, because of their character cannot be inserted in this Bill of Exceptions.

Done in open court this the 19th day of July, A. D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [242E]

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*In the District Court for Alaska, Third Division, at  
Cordova.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and THE COPPER  
RIVER & NORTHWESTERN RY. CO.,  
Defts.

**Plaintiff's Request for Instructions.**

The rule that an employee assumes the risk to which *he exposed* while engaged in the work of making a dangerous place safe, means no more than this: That the employee assumes the risks necessarily inherent in the work of making the dangerous place safe; but he does not assume the risk of dangers caused

by the negligence of the master in failing to take all reasonable precautions to make the place as safe as it can reasonably be made while the employee is engaged in the work of repair; the master cannot escape liability for his negligence simply because the work in which his servant was engaged is in making an unsafe place safe, and therefore is work of an unusually hazardous nature. The employee assumes the risks of the unusual hazards incident in the nature of the work, but not the enhancement of these risks caused by the master's negligence; and although you may find that the plaintiff was put to work in making an unsafe place safe, yet if his injury was caused by the negligence of the defendants they would still be liable. [243]

It is the duty of a master who is carrying on work of an unusually hazardous nature to the lives and persons of his servants to take all reasonable care to safeguard the place where the work is to be performed so as to make it as safe as, under all the circumstances, it can reasonably be made, and to have the work done under such rules as to the *method its* performance as will protect the servants while engaged in the work against all accidents which the master, in the exercise of due care, could reasonably foresee and guard against; and this rule as to the exercise of due care on the part of the master, applies as well to the work of making an unsafe place safe, as to any other work; the servant never assumes the risks of injury from the negligence of the master, unless he knew of the danger caused by such negligence at the time he exposed himself to it.

And in this case, if you find and believe from the evidence that the defendants, or those in charge of the work in the tunnel mentioned in the pleadings, were negligent in failing to take reasonable precautions such as a man of ordinary prudence and experience should have taken, to secure the roof of the tunnel from falling, and thereby unnecessarily increased the risks of injury to the men at work therein, and the plaintiff, at the time he entered the tunnel to work did not know of the conditions as to immediate danger then existing, and that shortly after he did enter the tunnel, and before he had a reasonable opportunity to see and appreciate the danger, was injured by a fall of the roof of the tunnel, and that the accident could have been prevented by the exercise of ordinary care on the part of the defendants, or of those placed in charge of the work, then your verdict should be for the plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 30, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [244]

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*In the District Court for Alaska, Third Division, at  
Cordova.*

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY et al.,

Defts.

**Plaintiff's Request for Instructions.****GENTLEMEN OF THE JURY:**

In this case Daniel S. Reeder, the plaintiff, sues the Katalla Company and the Copper River & Northwestern Railway Co. to recover damages for personal injuries alleged to have been sustained by the plaintiff while in the employ of the defendants. Plaintiff alleges in his complaint that the defendants are corporations, engaged in the business of common carriers by rail in the month of August, 1911, and that plaintiff was in their employ at that time; that on the 7th day of August, 1911, plaintiff was at work by direction of defendants, on their line of railway in a certain tunnel near Mile 131; that while so at work the timbers supporting the roof of the tunnel broke, or gave way, and plaintiff was caught beneath the falling earth, timbers, and gravel, and sustained serious and permanent injuries to his person; that his left leg was crushed and bruised for its entire length and so maimed and injured as to be permanently disabled; that the bones supporting the lower abdomen were broken and crushed, and that by reason of these injuries the plaintiff has been incapacitated for work, has suffered, and will continue to suffer great physical pain, and has been damaged in the sum of \$25,000.00; it is further alleged that the accident in which plaintiff was injured, was caused by the negligence of the defendants in failing to furnish plaintiff a safe place to work; that said place was unsafe by reason of the failure of the defendants to suitably [245] timber said tunnel and protect the



workmen from the danger of cave-ins and falling of material constituting the roof of the bore of said tunnel, all of which was known to the defendants or by the use of reasonable diligence could have been known by them, but that it was unknown to the plaintiff. The *Kalla* Company admits that it is a corporation, and that at the time alleged plaintiff was in its employ, and denies all the other allegations of the complaint.

The Copper River & Northwestern Railway Company admits that it is a common carrier and incorporated, but denies all other allegations of the complaint.

Both defendants plead affirmatively, first: that if plaintiff received the injuries complained of, they were caused by and arose out of risks incident to the employment in which he was engaged, and which risks he assumed. Second: that if plaintiff received the injuries complained of, such injuries were caused by the negligence or contributory negligence of the plaintiff, or by the negligence of a fellow-servant.

These affirmative allegations of the defendants are denied by the plaintiff.

The above and foregoing is a statement of the issues made by the pleadings, and the Court now instructs you as to the rules of law by which you are to be guided in the determination of these issues.

First: A common carrier is a person or corporation engaged in the transportation of freight and passengers, or either of them for hire. If the *Katalla* Company was engaged in transporting freight and passengers or either of them for hire, before and at the time of the accident and injury to the plaintiff,

then it was a common carrier.

Second: A common carrier in Alaska is liable to its employees for all damages which may result from the negligence of any of its officers, agents or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways [246] or works.

Third: Negligence is the failure to exercise that degree of care and foresight which a man of ordinary prudence would exercise in the management of his own affairs, taking into consideration the dangers to be avoided, and the probability or improbability of an accident from the want of such care, and the seriousness of the dangers to be avoided.

Fourth: It is the duty of a master, whether common carrier or not, to provide his employee with a reasonably safe place to work, and to exercise reasonable care to keep it safe; and if the employer fails in this duty he will be liable to the employee for damages the employee suffers by *reason such* negligence.

Fifth: If you find and believe from the evidence in this case that on or about the 7th day of August, 1911, the plaintiff was in the employ of the defendants in a certain tunnel near Mile 131 on the Copper River & Northwestern Railway, and that while so employed the roof of the tunnel fell upon the plaintiff injuring him, and that the falling of the roof was due to the negligence of the defendants in failing to properly timber the same, then you should find for the plaintiff. Or if the negligence was that of any officer, agent or employee of the defendants, and the defendants are common carriers, then the defendants would

be liable as if it was their own negligence.

Sixth: It is the duty of an employer before sending an employee to work in a tunnel, to see that the roof of the tunnel is properly timbered where timbering is required, so as to support the roof, and prevent the same from falling upon, and injuring the employee while at, or going to and from his work. A failure to exercise ordinary care in this respect, is negligence which makes the employer responsible for all damages that may result to the employee therefrom. So if you believe from the evidence that the tunnel in which the plaintiff was put to work on or about the 7th of August, 1911, was not [247] properly timbered so as to support the roof, and that was due to a want of ordinary care as that term has been explained to you in these instructions, on the part of the defendants, then the defendants would be liable for all damages that resulted to the plaintiff, if any, from the falling of the roof of the tunnel upon the plaintiff.

Seventh. If you find for the plaintiff under the instructions *giv* you, you will, in assessing his damages take into consideration the loss of time, if any, he has suffered by reason of said injury, from his trade or vocation, not counting, however, the time for which he was paid by the defendants, or either of them, after the injury, but only such loss of time and wages, if any, as he has suffered since that time as a direct result therefrom. That is one element of damages.

You may also take into consideration the plaintiffs' lessened capacity to work and earn a living in

the future if any such lessened capacity is shown by the evidence; and whether the injuries complained of and shown by the evidence are permanent in character. That is another element of damages. You should also consider the physical pain and suffering, if any, which the plaintiff endured, and will endure in the future, as a direct result of the injury complained of, and allow him such sum therefor as will in your judgment compensate him for such physical pain and suffering. And if you find that as a direct result of the injury complained of the plaintiff has suffered mental pain and anguish from a sense of his maimed condition (if you find he is maimed) and from a sense of his lessened ability to earn a living (if you find his capacity in that respect has been lessened), then you should allow him such sum as in your judgment will compensate him for such mental pain and suffering. The damages you find, if any, should be for such gross sum as in your judgment will fully compensate the plaintiff for all loss of earnings, if any, past and future, and all mental and physical suffering you find he [248] has undergone, or will undergo, not exceeding the sum of \$25,000.00, the amount claimed in the complaint.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 30, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [249]

[Instructions Requested by Copper River & N. W.  
Ry. Co.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COMPANY,  
Defendants.

Comes now the Copper River & Northwestern  
Railway Company and requests the Court to make  
the following instructions in the above case:

I.

You are instructed that the plaintiff alleges  
in his complaint that the *defendant* negligent acts  
consisted in the failure of the defendants to suitably  
timber and protect the workmen employed in said  
tunnel from the dangers of cave-in and falling of  
material constituting the roof of the bore of said  
tunnel, and said negligent acts consisted in the fact  
that the defendants failed and neglected to suitably  
timber said tunnel so as to protect the workmen by  
using old and *weaken* timbers and timbers of in-  
sufficient size and strength to have the construction  
of the roof of said tunnel properly made, so as to  
support the weight which would necessarily be im-  
posed thereon; therefore, you are instructed that be-  
fore the plaintiff can recover in this case, he must



establish by the preponderance of the evidence that the injury to plaintiff was caused by the defendants using old and *weaken* timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made so as to support the weight which would necessarily be imposed thereon. [250]

## II.

You are instructed that the burden is upon the plaintiff to establish his cause of action by a preponderance of evidence, and that the plaintiff cannot recover unless he proves by preponderance of the evidence not only that the defendant was negligent, but also that the defendant's negligence was the cause of the injury to the plaintiff, and if he fails to establish these facts by the preponderance of the evidence the plaintiff cannot recover.

## III.

You are instructed that the plaintiff is presumed to know of dangers that he has an opportunity to observe, and that he must inform himself of open, obvious risks, and if he does not do this and is injured by reason of his failure to do so, then he cannot recover.

## IV.

You are instructed that the plaintiff assumes the risks of all dangers that he has an opportunity to observe that are open, and that if the plaintiff accepted employment of the defendant in repairing or strengthening the tunnel for the purpose of making it safe, and said tunnel was in an unsafe condition and needed repairing, that the plaintiff, by accepting



such employment, assumed all the ordinary and usual risks and perils incident to such employment, whether it was dangerous or otherwise.

## V.

You are instructed that the law requires a person when doing a dangerous piece of work to exercise such care for his safety as an ordinary prudent man would exercise under the circumstances, and unless he exercises such care and is injured by reason of not having exercised such care, he cannot recover.

[251]

## VI.

You are instructed that if the plaintiff had actual or constructive knowledge of danger of working at the point where the accident happened, and that a reasonably prudent man under the circumstances would exercise due care to avoid danger, and the plaintiff was injured by reason of his failure to use ordinary care, he is guilty of contributory negligence and cannot recover.

## VII.

You are instructed that if the plaintiff continued working with knowledge, actual or constructive, of dangers which an ordinary prudent man would refuse or subject himself to, he is guilty of contributory negligence and cannot recover.

## VIII.

You are instructed that if the plaintiff failed to exercise ordinary and reasonable care, which care is such as an ordinary and prudent man would exercise under similar circumstances, he is guilty of contributory negligence and cannot recover.

## IX.

You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired for making it safe and the plaintiff was injured while assisting in either the work of repairing or fixing or causing the tunnel to be fixed so as to make it safe, then you are instructed that the law does not require of the defendant to furnish either a safe nor a reasonably safe place for the plaintiff to work, and if you find that the plaintiff was injured by the necessary progress of the work in the repairing, fixing and strengthening of the tunnel, he assumed the risks and cannot recover in this action. [252]

## X.

You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired to make it safe and the plaintiff was injured by reason of one of his co-workers taking or knocking one of the braces off, and that was the cause of the falling in of the timbers and earth which injured the plaintiff, then you are instructed that the plaintiff cannot recover in this action.

## XI.

You are instructed that where a servant is employed to assist in repairing or opening up a tunnel which is in a bad condition and out of repair and not

being used by a common carrier, the master does not owe to him the same duty to furnish a safe place as to that portion of its line out of repair and not being used as it does to his servant engaged in the operation of trains upon the roadbed in the ordinary course of business, and he is therefore subjected to greater risks and perils than he would, under ordinary circumstances, and in entering this service to perform this work he assumes the hazards incident to the work, and one of the hazards is the condition of the tunnel he is engaged to repair, and you are therefore instructed that if the plaintiff was injured by reason of the caving in of the tunnel because of the fact that the tunnel was in a bad condition and the plaintiff was assisting in fixing or repairing this bad condition, then you are instructed that the plaintiff cannot recover.

## XII.

You are instructed that if you find that the Copper River & Northwestern Railway Company was at the time of the injury to the plaintiff doing a common carrier business, and that the plaintiff was working for the Copper River & Northwestern Railway Company in which his work or employment consisted in repairing the tunnel or making the tunnel safe because it was in [253] a dangerous condition, and the plaintiff knew it was in a dangerous condition, then you are instructed that the plaintiff assumed the ordinary risks and dangers of his employment that was known to him, and those that might be known to him by the exercise of ordinary care and foresight, and he cannot recover in this case.

## XIII.

You are instructed that the plaintiff has sued both the Katalla Company and the Copper River & Northwestern Railway Company, alleging that each of them are separate corporations, and that the plaintiff was in the employ of both Katalla Company and the Copper River & Northwestern Railway Company; therefore you are instructed that before you can find that the plaintiff was in the employ of both the Katalla Company and the Copper River & Northwestern Railway, you must find from the evidence that the relation of master and servant existed between the Katalla Company and the Copper River & Northwestern Railway Company at the time of the injury, and if you find that the relation of master and servant did not exist between the plaintiff and Katalla Company at the time of injury, then the plaintiff cannot recover against the Katalla Company, and if you find the relation of master and servant did not exist between the Copper River & Northwestern Railway Company at the time the injury happened to plaintiff, then you cannot recover against the Copper River & Northwestern Railway Company.

## XIV.

You are instructed that if you find that the Katalla Company was not doing a common carrier business at the time that the plaintiff was injured, and also doing a common carrier business over that portion of the railroad line upon which the plaintiff was working and at the place where he was injured, you

are instructed that the plaintiff cannot recover in this action.

## XV.

You are instructed that before you can find that [254] the Copper River & Northwestern Railway Company was a common carrier at the place of the injury to the plaintiff, the plaintiff must prove that the Copper River & Northwestern Railway Company was offering or holding itself out to carry goods for all persons who tendered or offered goods and the price of carriage, and also find from the evidence that the Copper River & Northwestern Railway Company was carrying goods for all persons who offered or tendered them and the price for carrying them through the tunnel where the plaintiff was injured.

## XVI.

You are instructed that the plaintiff alleges that he was in the employ of the Copper River & Northwestern Railway Company on the 7th day of August, 1911, at the time he received his injuries, this allegation is denied by the Copper River & Northwestern Railway Company; therefore, you are instructed that the plaintiff must prove by preponderance of the evidence that at the time he received his injuries he was at that time in the employ of the Copper River & Northwestern Railway Company, and if plaintiff fails to establish that he was in the employment of the Copper River and Northwestern Railway Company at the time he received his injury, then you cannot find a verdict against the defendant, Copper River & Northwestern Railway Company.



## XVII.

You are instructed that if the plaintiff was engaged in repairing or strengthening or retimbering the tunnel that was in an unsafe condition, and he failed, along with his coloborers to take precautions in bracing the timbers and the tunnel caved in by reason of the fact that the plaintiff along with his coloborers failed or neglected to brace the timbers or failed to take any steps to prevent the cave-in while they were working, and the defendant had suitable timbers convenient which the plaintiff could have used to strengthen the timbers in the tunnel and prop the tunnel, and failed to do so, then you are instructed that the plaintiff cannot recover in this case. [255]

## XVIII.

You are instructed that if you find from the evidence that the Copper River & Northwestern Railway Company was doing a common carrier business at the time and place plaintiff received his injuries, and the plaintiff was employed by the Copper River & Northwestern Railway Company and was engaged in the repair of the tunnel to keep the dirt and earth from caving in, and of making the tunnel safe by timbering said tunnel or by replacing or strengthening the timbers of said tunnel for the purpose of making it safe, then you are instructed that the plaintiff by the acceptance of his employment assumes the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight and he cannot recover.



## XIX.

You are instructed that if you find that the Copper River & Northwestern Railway Company was a common carrier and that plaintiff was working for it at the time of receiving his injury, and his work consisted of work in repairing or making safe a tunnel that was at that time unsafe, you are instructed that the plaintiff assumed the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight, and that when he engages in making a place that is known to be dangerous, safe, the hazards of the dangerous place are the ordinary and known dangers of such a place, and by his acceptance of the employment, the servant necessarily assumes them, and the Copper River & Northwestern Railway Company cannot be held liable.

## XX.

You are instructed that if you find that the Copper River & Northwestern Railway Company was doing a common carrier business, but not doing a common carrier business, at the place or through the tunnel where the plaintiff was injured, [256] then you are instructed that the Copper River & Northwestern Railway Company cannot be held as a common carrier for his injuries received at the place alleged in the complaint.

## XXI.

You are instructed that if you find from the evidence that the plaintiff's injury was caused by reason of the negligence of a co-worker or fellow-servant of the plaintiff, that he cannot recover in this action.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 30, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [257]

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*In the District Court of the Territory of Alaska,  
Third Division.*

No. C—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Instructions [Requested by Katalla Co.].**

Comes now the Katalla Company and requests the Court to make the following instructions in the above case:

I.

You are instructed that the plaintiff alleges in his complaint that the *defendant* negligent acts consisted in the failure of the defendant to suitably timber and protect the workmen employed in said tunnel from the dangers of cave-in and falling of material constituting the roof of the bore of said tunnel, and said negligent acts consisted in the fact that the defendants failed and neglected to suitably timber said tunnel so as to protect the workmen by using old and weaken timbers and timbers of insufficient size and strength to have the construction of the

roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon; therefore you are instructed that before the plaintiff can recover in this case, he must establish by the preponderance of the evidence that the injury to plaintiff was caused by the defendants using old and weaken timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made so as to support the weight which would necessarily be imposed thereon.

## II.

You are instructed that the burden is upon the [258] plaintiff to establish his cause of action by a preponderance of evidence, and that the plaintiff cannot recover unless he proves by preponderance of the evidence not only that the defendant was negligent, but also that the defendant's negligence was the cause of the injury to the plaintiff, and if he fails to establish these facts by the preponderance of the evidence the plaintiff cannot recover.

## III.

You are instructed that if you find that the Katalla Company was at the time of the injury to the plaintiff doing a common carrier business at the point or place where plaintiff was injured, and that the plaintiff was working for the Katalla Company, which work or employment consisted in repairing the tunnel or making the tunnel safe because it was in a dangerous condition, and the plaintiff knew it was in a dangerous condition, then you are instructed that the plaintiff assumed the ordinary

risks and dangers of his employment that were known to him and those that might be known to him by the exercise of ordinary care and foresight, and he cannot recover in this case.

## IV.

You are instructed that if the plaintiff was engaged in repairing or strengthening or retimbering the tunnel that was in an unsafe condition, and he failed along with his co-laborers to take precautions in bracing the timbers, and the tunnel caved in by reason of the fact that the plaintiff along with his co-laborers failed or neglected to brace the timbers, or failed to take any steps to prevent the cave-in while they were working, and the defendant had suitable timbers convenient which the plaintiff could have used to strengthen the timbers in the tunnel and prop the tunnel and failed to do so, then you are instructed that the plaintiff cannot recover in this case. [259]

## V.

You are instructed that if you find from the evidence that the plaintiff's injury was caused by reason of the negligence of a co-worker or fellow-servant of the plaintiff, that he cannot recover in this action.

## VI.

You are instructed that if you find from the evidence that the Katalla Company was doing a common carrier business at the time and through the tunnel where plaintiff received his injuries, and the plaintiff was engaged in the repair of the tunnel to keep the dirt and earth from caving in and of mak-

ing the tunnel safe by timbering said tunnel, or by strengthening the timbers of said tunnel, then you are instructed that the plaintiff by the acceptance of his employment assumes the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight and he cannot recover in this action.

#### VII.

You are instructed that if you find from the evidence that the Katalla Company was not a common carrier at the time and place of the accident to plaintiff, and that the plaintiff was engaged in work of making the tunnel safe to prevent caving in and falling of earth by timbering said tunnel or by replacing and strengthening the timbers of the tunnel, and while employed in this work he received his injury, you are instructed that the plaintiff assumes the hazards incident to such work and he cannot recover.

#### VIII.

You are instructed that if you find from the evidence that the Katalla Company was not a common carrier at the time and place where plaintiff was injured, and that the plaintiff was employed by the Katalla Company and was engaged in the repair of the tunnel that was unsafe, you are instructed that by the plaintiff accepting this employment he assumes the hazards incident [260] to such work and cannot recover in this case.

#### IX.

You are instructed that if you find from the evi-



dence that the Katalla Company was not doing a common carrier business at the time and place where plaintiff received his injuries, and the plaintiff was engaged in the repair of the tunnel to keep the dirt and earth from caving in and of making the tunnel safe, then you are instructed that the plaintiff by the acceptance of this employment assumes the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight and cannot recover.

## X.

You are instructed that if you do find from the evidence that the Katalla Company was not a common carrier when the plaintiff was injured, you are instructed that if the plaintiff was engaged in the work of making the tunnel safe, then you are instructed that the plaintiff assumed the ordinary and known dangers of the place and he cannot recover.

## XI.

You are instructed that before you can find that the Katalla Company was at the time and place where the plaintiff was injured a common carrier, you must find from the evidence that the Katalla Company was at that time offering or holding itself out to carry goods for all persons who tendered or offered them the price of carriage, or find from the evidence that the Katalla Company was carrying goods for all persons who offered or tendered them the price for carrying same through the tunnel where plaintiff was injured.



## XII.

You are instructed that the plaintiff has sued both the Katalla Company and the Copper River & Northwestern Railway Company, alleging that each of them are separate corporations, and that the plaintiff was in the employ of both Katalla Company and the Copper River & Northwestern [261] Railway Company; therefore you are instructed that before you can find that the plaintiff was in the employ of both the Katalla Company and the Copper River & Northwestern Railway Company, you must find from the evidence that the relation of master and servant existed between the Katalla Company and the Copper River & Northwestern Railway Company at the time of the injury, and if you find that the relation of master and servant did not exist between the plaintiff and Katalla Company at the time of injury, then the plaintiff cannot recover against the Katalla Company, and if you find the relation of master and servant did not exist between the Copper River and Northwestern Railway Company at the time the injury happened to plaintiff, then you cannot recover against the Copper River & Northwestern Railway Company.

## XIII.

You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired for making it safe and the plaintiff was injured while assisting in either the work or repairing or fixing or causing the

tunnel to be fixed so as to make it safe, then you are instructed that the law does not require of the defendant to furnish either a safe nor a reasonably safe place for the plaintiff to work, and if you find that the plaintiff was injured by the necessary progress of the work in the repairing, fixing and strengthening of the tunnel, he assumed the risks and cannot recover in this action.

## XIV.

You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired to make it safe and the plaintiff was injured by reason of one of his co-workers taking or knocking one of [262] the braces off, and that was the cause of the falling in of the timbers and earth which injured the plaintiff, then you are instructed that the plaintiff cannot recover in this action.

## XV.

You are instructed that if you find that the Katalla Company was not doing a common carrier business at the time that the plaintiff was injured, and also doing a common carrier business over that portion of the railroad line upon which the plaintiff was working and at the place where he was injured, you are instructed that the plaintiff cannot recover in this action.

## XVI.

You are instructed that where a servant is employed to assist in repairing or opening up a tunnel

which is in a bad condition and out of repair and not being used by a common carrier, the master does not owe to him the same duty to furnish a safe place as to that portion of its line out of repair and not being used as it does to his servant engaged in the operation of trains upon the roadbed in the ordinary course of business, and he is therefore subjected to greater risks and perils than he would, under ordinary circumstances, and in entering this service to perform this work he assumes the hazards incident to the work and one of the hazards is the condition of the tunnel he is engaged to repair and you are therefore instructed that if the plaintiff was injured by reason of the caving in of the tunnel because of the fact that the tunnel was in a bad condition and the plaintiff was assisting in fixing or repairing this bad condition, then you are instructed that the plaintiff cannot recover.

## XVII.

You are instructed that the plaintiff is presumed to know of dangers that he has an opportunity to observe and that he must inform himself of open, obvious risks, and if he does not do this and is injured by reason of his failure to do so, then he cannot recover. [263]

## XVIII.

You are instructed that the plaintiff assumes the risks of all dangers that he has an opportunity to observe that are open, and that if the plaintiff accepted employment of the defendant in repairing or strengthening the tunnel for the purpose of making it safe and said tunnel was in an unsafe condition

and needed repairing, that the plaintiff by accepting such employment assumed all the ordinary and usual risks and perils incident to such employment whether it was dangerous or otherwise.

XIX.

You are instructed that the law requires a person when doing a dangerous piece of work to exercise such care for his safety as an ordinary prudent man would exercise under the circumstances, and unless he exercises such care and is injured by reason of not having exercised such care, he cannot recover.

XX.

You are instructed that if the plaintiff had actual or constructive knowledge of danger of working at the point where the accident happened and that a reasonably prudent man under the circumstances would exercise due care to avoid danger and the plaintiff was injured by reason of his failure to use ordinary care, he is guilty of contributory negligence and cannot recover.

XXI.

You are instructed that if the plaintiff continued working with knowledge actual or constructive of dangers which an ordinary prudent man would refuse or subject himself to, he is guilty of contributory negligence and cannot recover.

XXII.

You are instructed that if the plaintiff failed to exercise ordinary and reasonable care, which care is such as an ordinary prudent man would exercise under similar circumstances [264] he is guilty of contributory negligence and cannot recover.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 30, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [265]

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*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Defendant's Exceptions to Court's Instructions to  
Jury.**

Defendant excepts to the first instruction given by the Court on page 1, to the effect that an employer of labor is obliged to furnish a reasonably safe place in view of the circumstances of labor or work to be done, the surrounding circumstances and maintain it as a reasonably safe place for the employees to work in. Defendant excepts to this instruction for the reason that the facts and evidence of this case show that the plaintiff was engaged in retimbering and strengthening the tunnel in which he was working because said tunnel was not in a safe condition and it was being retimbered and strengthened for the purpose of making it safe, and that the plaintiff

knew that said tunnel was being retimbered and strengthened for the purpose of making it safe. That said instruction required of the defendant a higher degree of safety than the work or employment required.

## II.

Defendant excepts to the third instruction on page 1 regarding cause of Mr. Reeder's injury, wherein said instruction states, "Taking those two broad principles of law, your duty then will be to decide in this case what was the cause of Mr. Reeder's injury, about which there is no doubt, or no contention,—that is, the extent of the injury or accident may be a question for you, what was the real, proximate cause [266] of his injury." Defendant excepts to this instruction for the reason that it is confusing.

## III.

Defendant excepts to the first instruction on page 2, for the reason that said instruction states that law is common sense and that we differ sometimes as to what is common sense, so sometimes we differ as to law; for the reason that the law is definite and fixed, and from said instructions the jury may have inferred that they had the right to differ from the law as given to them by the Court.

## IV.

Defendant excepts to the instruction as to the proximate cause on pages 2, 3 and 4 regarding proximate cause, for the reason that the evidence in this case shows that the tunnel caved in either by reason of a brace having been knocked off or by reason of



the construction of joinder together with a cap or segment supporting said tunnel.

V.

Defendant further excepts to the refusal of the Court to give the following instructions requested by the defendant.

1.

Defendant excepts to the refusal of the Court to give the first instruction requested by the defendant on page 1.

2.

Defendant excepts to the refusal of the Court to give the second instruction requested by the defendant on page 2.

3.

Defendant excepts to the refusal of the Court to give the third instruction requested by the defendant on page 3.

4.

Defendant excepts to the refusal of the Court to give the fourth instruction requested by the defendant on page 4.

5.

Defendant excepts to the refusal of the Court to [267] give the fifth instruction requested by the defendant on page 5.

6.

Defendant excepts to the refusal of the Court to give the sixth instruction requested by the defendant on page 6.

7.

Defendant excepts to the refusal of the Court to

give the seventh instruction requested by the defendant on page 7.

8.

Defendant excepts to the refusal of the Court to give the eighth instruction requested by the defendant on page 8.

9.

Defendant excepts to the refusal of the Court to give the ninth instruction requested by the defendant on page 9.

10.

Defendant excepts to the refusal of the Court to give the tenth instruction requested by the defendant on page 10.

11.

Defendant excepts to the refusal of the Court to give the eleventh instruction requested by the defendant on page 11.

12.

Defendant excepts to the refusal of the Court to give the twelfth instruction requested by the defendant on page 12.

13.

Defendant excepts to the refusal of the Court to give the thirteenth instruction requested by the defendant on page 13.

14.

Defendant excepts to the refusal of the Court to give the fourteenth instruction requested by the defendant on page 14.

15.

Defendant excepts to the refusal of the Court to

give the sixteenth instruction requested by the defendant on page 15. [268]

16.

Defendant excepts to the refusal of the Court to give the sixteenth instruction requested by the defendant on page 16.

17.

Defendant excepts to the refusal of the Court to give the seventeenth instruction requested by the defendant on page 17.

18.

Defendant excepts to the refusal of the Court to give the eighteenth instruction requested by the defendant on page 18.

19.

Defendant excepts to the refusal of the Court to give the nineteenth instruction requested by the defendant on page 19.

20.

Defendant excepts to the refusal of the Court to give the twentieth instruction requested by the defendant on page 20.

21.

Defendant excepts to the refusal of the Court to give the twenty-first instruction requested by the defendant on page 21.

Exceptions allowed this the 5th day of May, A. D. 1913.

PETER D. OVERFIELD,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 5, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [269]

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*In the District Court of the Territory of Alaska,  
Third Division.*

C—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY, a Corporation and COP-  
PER RIVER & NORTHWESTERN RY. CO.,  
a Corporation,

Defendants.

**Verdict.**

We, the jury, duly selected, impaneled, sworn and charged in the above-entitled action, do find for the plaintiff and against the defendants, and each of them, and assess plaintiff's damages at \$5,000.00.

Dated at Cordova, Alaska, this 26th day of April, 1913.

JOSEPH A. BOURKE,

Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 26, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy.

Entered Court Journal No. C.—2, page No. 56.

[270]

*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COMPANY,  
Defendants.

**Motion [of Copper River & N. W. Ry. Co.] for New  
Trial.**

Comes now the Copper River & Northwestern Railway Company, by its attorney, R. J. Boryer, and moves the Court for a new trial in this case for the following reasons:

I.

That the plaintiff failed to show or prove by the preponderance of the evidence and failed in any manner to show that the plaintiff was ever in the employ of the Copper River & Northwestern Railway Company, and failed to show that he was in the employ of the Copper River & Northwestern Railway Company at the time he received his injury.

II.

For the reason that the plaintiff has failed to show that the Katalla Company and the Copper River & Northwestern Railway Company are in any manner or way connected with each other or that the Copper River & Northwestern Railway Company or any of its agents were in any way connected with the work

being performed by the plaintiff at the time he was injured, and failed to show that the Copper River & Northwestern Railway Company either owned or was in any way connected with the line of road mentioned in plaintiff's complaint at the time of the injury to the plaintiff.

III.

For the further reason that the plaintiff [271] admitted that he was familiar with the work that he was performing, knew that it was dangerous, knew of the construction of the cap and segment, which he claimed caused his injury, and knew of the danger of such cap and segment at the time he was injured and knew of, prior to his injury, the dangers that caused his injury.

IV.

For the further reason that said Verdict is against the law and evidence of this case.

V.

For the further reason that said Verdict is excessive.

R. J. BORYER,  
Attorney for Defendant Copper River & Northwestern Ry. Co.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 29, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [272]



*In the District Court of the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COMPANY,  
Defendants.

**Motion [of Katalla Co.] for New Trial.**

Comes now the Katalla Company by its attorney, R. J. Boryer, and moves the Court for a new trial in this case for the following reasons:

I.

That the plaintiff admitted in his evidence that at the time he was injured he was engaged in retimbering and strengthening the tunnel because said tunnel was in an unsafe condition; that he knew it was in an unsafe condition and testified in this case that his injury was received from an accident from the caving-in of the tunnel, which cave-in was caused by the faulty construction or joiner of the caps and segments supporting the roof of the tunnel. That he was familiar with and knew of the manner in which the caps and segments were constructed or joined and that he repeatedly noticed the construction and joiner of the caps and segments, knew that they were dangerous and knowing these facts, admitted that he continued work without protest and admitted that he was injured by reason of the cave-in

of said tunnel because of the improper constructions or joinder of said caps and segments, all of which were known to him at the time of the cave-in.

II.

For the further reason that said Verdict is [273] against both the Copper River & Northwestern Railway Company and Katalla Company, and it was not shown in the evidence that the plaintiff was employed by the Copper River & Northwestern Railway Company at the time of his injury or that it was in any way connected with this defendant, Katalla Company.

III.

For the further reason that the Verdict in this case is contrary to the law and instructions and evidence in the case.

IV.

For the further reason that said Verdict is excessive.

R. J. BORYER,

Attorney for Defendant Katalla Company.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. April 29, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [274]

*In the District Court of the Territory of Alaska,  
Third Division.*

Special April, 1913, Term—May 5th—22d Court day  
—Monday.

Entered Court Journal No. C.—2, Page No. 80.  
C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY CO.,

Defendants.

**Order Denying Motions for New Trial.**

Coming on to be heard upon defendants' Katalla Company and Copper River & Northwestern Railway Co., motions for a new trial, filed in the above-entitled cause, J. H. Cobb appearing for the plaintiff and against said motion; R. J. Boryer appearing for defendants and for said motion, and after arguments had by counsel for plaintiff and counsel for defendants, and the Court being fully advised in the premises,—

IT IS ORDERED that said motions and each of them be and they are hereby denied, to which order and ruling of the Court defendants, and each of them, except and exception is duly allowed. [275]

*In the District Court for Alaska, Third Division, at  
Cordova.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and THE COPPER  
RIVER & NORTHWESTERN RAILWAY  
CO., Corporations,

Defendants.

### **Judgment.**

This cause came on regularly to be heard, and came the plaintiff, by his attorney, Mr. J. H. Cobb, also came the defendants by their attorney, Mr. R. J. Boryer, and all parties announced ready for trial; thereupon came a jury of good and lawful men, to wit: Joseph Bourke, and eleven others, who having been duly tried, selected, impaneled and sworn, and having heard the evidence, the argument of counsel, and the instructions of the Court, retired in charge of a bailiff to consider of their verdict; and after due deliberation had, returned into open court the following verdict, to wit:

“We, the jury, duly selected, impaneled, sworn and charged in the above-entitled action, do find for the plaintiff and against the defendants, and each of them, and assess plaintiff’s damages at \$5,000.00. Dated at Cordova, Alaska, this 26th day of April, 1913.

[Signed] JOSEPH BOURKE,

Foreman.”

which said verdict was by the Court received, and ordered filed herein; and the motions for new trial of the defendants having been heretofore overruled and denied, now on motion of Mr. Cobb, for Judgment on said verdict.

It is considered by the Court and so ordered and adjudged, that the plaintiff, Daniel S. Reeder, do have and recover of and from the defendants, the Katalla Company and the Copper River & Northwestern Railway Co., corporations, [276] jointly and severally, the sum of Five Thousand (\$5,000.00) Dollars, with interest thereon from the date hereof at the rate of 8 per cent per annum and all costs of suit taxed at \$100.00 for all of which let execution issue.

Done in open court this 5th day of May, 1913.

PETER D. OVERFIELD,

Judge.

Entered Court Journal No. C.—2, page No. 83.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 5, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [277]

*In the District Court for the Territory of Alaska,  
Third Division.*

Special April, 1913, Term—May 5th—22d Court  
Day—Monday.

Entered Court Journal No. C.—2, Page No. 81.  
No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER  
& NORTHWESTERN RY. CO.,

Defendants.

**Order Fixing Time to File and Present Bill of  
Exceptions and Granting Stay of Execution.**

Now, on this day, on motion of R. J. Boryer, for an order of the Court fixing the time within which to file and present the Bill of Exceptions in the above-entitled cause and for a stay of execution in said cause; J. H. Cobb appearing for the plaintiff and R. J. Boryer appearing for the defendant, and the Court being fully advised in the premises,

IT IS ORDERED that said defendants be and they are hereby granted 60 days to file and present their bill of exceptions in the above-entitled cause and

IT IS FURTHER ORDERED that a stay of execution be granted for said period. [278]



*In the District Court for Alaska, Third Division, at  
Cordova.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY et al.,

Defendants.

**Notice of Attorney's Lien.**

You will take notice that under and by virtue of a special agreement and contract with the plaintiff, I have an undivided interest of one-half in the judgment in the above-entitled cause, and claim a lien upon said judgment to the extent of one-half the amount thereof.

J. H. COBB.

To the Katalla Company and the Copper River & Northwestern Railway Company, Judgment Defendants, or Mr. R. J. Boryer, Their Attorney of Record.

Service of the above notice admitted and a copy received this 6th day of May, 1913.

R. J. BORYER,

Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 6, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [279]

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska,  
Third Division. Jul. 29, 1913. Arthur Lang, Clerk.  
By V. A. Paine, Deputy. [280]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Motion for Transfer of All Pleadings and Files to  
Juneau, Alaska.**

Comes now the Copper River & Northwestern Rail-  
way Company and Katalla Co., by its attorney, R. J.  
Boryer, and moves the Court that all of the records  
and files in the above-entitled case be transferred  
forthwith to Juneau, Alaska, for the following rea-  
sons:

That the defendants Copper River & Northwestern  
Railway Company and the Katalla Company, desire  
to take an appeal from the Judgment entered in the  
above-entitled cause and that an Order has been en-  
tered extending the time for filing, certifying and set-  
tling Bill of Exceptions in this case to and including  
the 14th day of July, A. D. 1913, that the attorney, J.  
H. Cobb, for the plaintiff, resides in Juneau, and that  
this Honorable Court of this Division has been or-

dered to Juneau for the purpose of holding court in that place and will be leaving here on or about the 2d of July, A. D. 1913, and will not be in this Division between the aforesaid date and the 14th day of July, 1913, and for the further reason that this defendant desires to settle and have certified the Bill of Exceptions in the above case between the 2d day of July and the 14th day of July, 1913, and sue out the Writ of Error between said dates, and will be unable to do so unless the files and records are transferred to Juneau.

R. J. BORYER,  
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 26, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [281]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order Transferring Files and Records to Juneau,  
Alaska.**

The motion of R. J. Boryer for an order on behalf of the Copper River & Northwestern Railway Com-

pany and Katalla Company, to transfer the records and files in the above-entitled case to Juneau, Alaska, having come on to be heard this day and the same having been duly considered,

It is hereby ORDERED, ADJUDGED and DECREED that the files and records in the above-entitled case be forwarded forthwith to Juneau, Alaska, so as to be in Juneau, Alaska, on or before the 14th day of July, A. D. 1913, and to remain until such time as said files and records are ordered returned to this Division.

Done this the 26th day of June, A. D. 1913.

FRED M. BROWN,

Judge.

Entered in Court Journal No. 7, page No. 284.

[Endorsed]: Filed in the District Court, Territory of Alaska, 3d Div. June 26th, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [282]

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*In the District Court for Alaska, Division No. Three,  
at Cordova.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY et al.,

Defendants.

**Stipulation [Extending Time to August 1, 1913, to  
Settle Bill of Exceptions.]**

IT IS HEREBY STIPULATED that the time for settling the Bill of Exceptions herein may be ex-

tended to, and inclusive of, August 1st, 1913, and *extension* shall not issue prior to said date.

J. H. COBB,  
Attorney for Plaintiff,  
JNO. R. WINN,  
For R. J. BORYER,  
Attorney for Defendant.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. July 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [283]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, and KATALLA COM-  
PANY,

Defendants.

**Order Allowing Writ of Error.**

On this day come the defendants, the Copper River & Northwestern Railway Company and Katalla Company, by their attorney, and filed herein and presented to the Court its petition praying for an allowance of a Writ of Error, and an Assignment of Errors to be

urged by it, praying also that a transcript of the record and proceedings in said cause, with all things concerning the same, be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that the amount of bond for supersedeas in said cause be fixed. In consideration whereof, the Court does hereby allow a Writ of Error as prayed for.

Dated this the 19 day of July, A. D. 1913.

FRED M. BROWN,  
Judge for the District Court for the Territory and  
District of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [284]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY. and KATALLA COM-  
PANY,

Defendants.

**Motion to Transmit Original Exhibits.**

Comes now the defendants and moves the Court for



an order directing the Clerk of Court to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the original exhibits in this cause, said exhibits being numbered: Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H" and Defendant's Exhibits "No. 1, 2, 3, 4, 5, 6," for the reason that it is impossible to copy all of said exhibits, and cannot be attached to the Bill of Exceptions.

R. J. BORYER,  
Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [285]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order [Directing Transmission of Original Exhibits  
to Appellate Court].**

On motion of the Copper River & Northwestern

Railway Company and Katalla Company, for an Order requiring and directing the Clerk of Court to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit the original exhibits in this cause, being numbered Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," and Defendant's Exhibits "No. 1, 2, 3, 4, 5, 6," and it appearing to the satisfaction of the Court that said original exhibits should be returned to the Court of Appeals and that said Motion should be granted:

NOW, THEREFORE, it is hereby ORDERED that the Clerk of this Court be and he is hereby authorized and directed to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit each and all of the said original exhibits in this cause as a part of the return to the Writ of Error in this case.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [286]

*In the District Court for the Territory of Alaska,  
Third Division.*

C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY, a Corporation, and COP-  
PER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, a Corporation,

Defendants.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS,  
That the Katalla Company, a corporation, and Cop-  
per River and Northwestern Railway Company, a  
corporation, defendants in the above-entitled action  
as principals, and American Surety Company of  
New York, a corporation, organized and existing  
under the laws of the State of New York, duly  
authorized to do business in Alaska and to sign  
bonds as surety therein, as surety are held and  
firmly bound *until* Daniel S. Reeder, plaintiff and  
defendant in error in the above-entitled cause, in the  
penal sum of Seven Thousand Dollars, lawful  
money of the United States of America, to be paid  
to the said Daniel S. Reeder, his successors or  
assigns, his executors and administrators, for which  
payment well and truly to be made, we bind our-  
selves and each of us, and severally, and our and  
each of our successors and assigns, firmly by these  
presents.

Sealed with our seals and dated this the 11th day of July, A. D. 1913.

The condition of the foregoing obligation is such that

WHEREAS the said Katalla Company, a corporation, and the said Copper River and Northwestern Railway Company, a corporation, defendants in said cause as the above-named [287] principal obligators are suing out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause entered May 5th, 1913, by the District Court of the United States for the District and Territory of Alaska, Third Division, in favor of said plaintiff for and against said defendants for the sum of Five Thousand (\$5,000.) Dollars and costs.

WHEREAS, the said principal obligators desire to give good and sufficient security in accordance with the statute in such cases made and provided for, all costs and damages to be occasioned by said Writ of Error and to operate as a supersedeas upon such judgment and stay the execution thereof pending the hearing and decision of said Circuit Court of Appeals upon said Writ of Error.

Now, therefore, the condition of this obligation is such that if the above-bounden principal obligators, defendants in said cause, shall prosecute said Writ of Error to effect, and if they fail to make good its plea, shall answer all damages interest and costs, then this obligation shall be void, otherwise

to remain in full force and effect.

COPPER RIVER AND NORTHWEST-  
ERN RAILWAY COMPANY, a Cor-  
poration.

By R. J. BORYER,  
Its Attorney.

KATALLA COMPANY, a Corporation,

By R. J. BORYER,  
Its Attorney.

AMERICAN SURETY COMPANY OF  
NEW YORK,

[Seal] By EDWARD J. LYONS,  
Resident Vice-President.

By S. H. MELROSE,  
Resident Assistant Secretary.

The foregoing bond is approved by me as to form  
and amount, sufficiency and surety as a cost bond  
only.

Dated this the 19th day of July, 1913.

FRED M. BROWN,  
Judge. [288]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Affidavit in Support of Supersedeas Bond.**

United States of America,

District of Alaska,—ss.

John R. Winn, being first duly sworn, upon his oath deposes and says: That I am a member of the Bar of the above-entitled court and am acquainted with J. H. Cobb and R. J. Boryer, two other members of said Bar. That this affiant had no connection with the above-entitled case as an attorney until sometime just prior to the 29th day of June, A. D. 1913, at which time I received a telegram from R. J. Boryer from Cordova, Alaska, his place of residence, which telegram stated substantially that he would be in Juneau on the steamer "Alameda" on or about the 29th day of June, and he desired me to see Mr. Cobb and obtain from him a Stipulation for further time in which to settle the Bill of Exceptions and perfect the record for the Appellant Court in the above-entitled cause. However, I did not see Mr. Cobb until Mr. Boryer's arrival at Juneau on the 29th day of June, and at that time I entered the law office of Malony and Cobb in the town of Juneau, found Mr. Boryer and Mr. Cobb engaged in conversation concerning the perfecting of the record in the above-entitled cause for the Appellant Court and obtaining of a supersedeas bond. Mr. Boryer desired thirty (30) days the 14th day of July for the purpose last mentioned, [289] but Mr. Cobb suggested that he thought the record ought to be perfected and a supersedeas obtained by August 1st, which said last-mentioned time was agreed upon by



and between Mr. Cobb and Mr. Boryer in my presence. Then Mr. Boryer stated, "Now, Mr. Cobb, it is understood that you will agree to a stay of execution until the first day of August, until I procure a Surety Company bond to act as a supersedeas during the pendency of the action before the Appellant Court, and that you will accept a Surety Company bond instead of the ordinary bond that is procured in cases of this kind," and Mr. Cobb said that he would agree to these matters, and it was agreed between Mr. Boryer and Mr. Cobb in my presence that the bond should be in the amount of \$25,000.00. That Mr. Cobb then agreed to draw up the Stipulation in this case according to the understanding that he had had with Mr. Boryer. Mr. Boryer then on that day departed for the south and on the following day Mr. Cobb drew up the Stipulation which has been filed in this case and when he presented it to me for my signature I insisted that he should write therein the last clause, which reads as follows: "and execution shall not issue prior to said date," meaning the first day of August. I stated to Mr. Cobb at that time that unless that clause was put in something might happen, that execution might issue before Mr. Boryer could put up a supersedeas bond, and Mr. Cobb wrote the clause in in his own handwriting. There is no question but what Mr. Cobb absolutely agreed that when the Surety Company bond was filed that it was to act as a stay bond pending the decision of the Appellant Court in this case.

JNO. R. WINN.

Subscribed and sworn to before me this the 19th day of July, A. D. 1913.

R. E. ROBERTSON,  
Notary Public in and for the District of Alaska,  
Residing at Juneau, Alaska, Commission Expiring  
June 19, 1917.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [290]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Affidavit in Support of Supersedeas Bond.**

United States of America,  
District of Alaska,—ss.

R. J. Boryer, being first duly sworn, upon his oath deposes and says: That he is now and has been at all times attorney of record for the defendants; that Judgment was entered in this case on the 5th day of

May, 1913, at which time the Honorable Peter D. Overfield, the presiding Judge, entered an order allowing until July 14th for settling, signing and filing Bill of Exceptions and a stay of execution during said time. That shortly thereafter the said Honorable Peter D. Overfield was called from the Third Judicial Division, over which he presided, to the First Judicial Division for the purpose of holding court. That shortly after arriving in the First Judicial Division the said court proceeded to the States and during his stay in the States his term of office expired and the Honorable Fred M. Brown was appointed Judge of the Third Judicial Division to succeed the Honorable Peter D. Overfield, after which the Honorable Fred M. Brown was called to the First Judicial Division for the purpose of holding a term of court. That while the Honorable Peter D. Overfield was in Juneau, Alaska, and prior to the appointment of the Honorable Fred M. Brown as Judge of the Third Judicial Division, there was no Judge presiding in the Third Judicial Division, all of which was between the date of entry of Judgment in this case and the time allowed [291] for the settling and signing of the Bill of Exceptions and the stay of execution, to wit, between the 5th day of May, A. D. 1913, and the 14th day of July, A. D. 1913; that by reason of the Honorable Peter D. Overfield being called to Juneau for the purpose of taking up judicial matters in the First Division and his departure for the States, and the Honorable Fred M. Brown being called to the First Judicial Division from the Third Judicial Division for the

purpose of holding court, this affiant found it necessary to take up with the attorney for the plaintiff in this case, J. H. Cobb, a Stipulation extending the time for suing out a Writ of Error and perfecting its Writ of Error including stay bond in this case. That J. H. Cobb, attorney for the plaintiff in this case, resides in Juneau, Alaska, a distance of about 600 miles from Cordova, where this affiant resides, and is only accessible by steamers about every 6 or 8 days; that this affiant wired John R. Winn, of Juneau, requesting him to secure from J. H. Cobb further extension of time to settle Bill of Exceptions and perfect record for Appellant Court in the above case; that this affiant left Cordova for the purpose of going to Juneau to secure a Stipulation from J. H. Cobb regarding the furnishing of a stay bond, signed by the American Surety Company, and the amount of stay bond, and all proceedings necessary to perfecting Writ of Error in the above-entitled case. That upon my arrival in Juneau I took up with Mr. J. H. Cobb the matter of a stipulation extending the time for filing and presenting Writ of Error and stay bond to be signed by the American Surety Company, and the amount of said bond, and that the said conversation took place on Sunday, and it was my understanding from my conversation with Mr. Cobb that he consented and agreed that the defendants were to have until the first day of August, 1913, for the purpose of filing the Writ of Error in the above-entitled case and until said date to secure and file a stay bond in the aforesaid Writ of Error, and that Mr. Cobb agreed that he would

[292] accept a bond in the amount of \$25,000.00, signed by the American Surety Company, which bond he consented could be filed on or before the first day of August, A. D. 1913, and which bond was to act as and be a stay bond pending the decision of the Circuit Court of Appeals on Writ of Error to be sued out in the aforesaid case. That upon this understanding I immediately proceeded to Seattle on the same day for the purpose of securing the aforesaid bond, and did secure said bond according to my agreement with Mr. Cobb, and relying on said understanding returned to Juneau for the purpose of suing out the aforesaid Writ of Error and filing the aforesaid bond according to my understanding with Mr. Cobb. That part of the aforesaid conversation and agreement was in the presence of John R. Winn, an attorney residing in Juneau, Alaska; that I have read the affidavit of John R. Winn, and the same is correct as to the matters and facts therein contained and same took place in my presence. That relying on the above understanding, and it having been agreed that the Stipulation was to be drawn and signed the following day and given to John R. Winn, I proceeded to Seattle for the purpose of getting aforesaid bond, which bond I secured in Seattle, signed by the American Surety Company in the amount of \$25,000.00 as per our agreement, and returned to Juneau for the purpose of having same filed and approved to stay execution in this case pending appeal, and hereby tender said bond at this time in this court in the above-entitled case.

That by reason of the above understanding re-



garding the accepting of the aforesaid bond and filing of Writ of Error, and that the giving of said bond was consented to by plaintiff's attorney, and was to be and act as a supersedeas bond pending the determination by the Circuit Court of Appeals of the Writ of Error in said case if filed on or before [293] August 1st, 1913, this affiant did not file the Writ of Error or the supersedeas bond until such date as they were presented and filed in this Court, otherwise said Writ of Error and bond would have been filed on or before the 14th day of July, 1913.

That this plaintiff, Daniel S. Reeder, in this case, has no property or money exempt from execution, and that if the judgment in this case should be reversed, and execution issued prior thereto against the defendants, the Copper River & Northwestern Railway Company and Katalla Company, said defendants would be unable to recover said money. That the defendant, Copper River & Northwestern Railway Company is the owner of a railroad and right-of-way and equipment for running and operating a railroad, which railroad extends from Cordova, Alaska, to Kennecott, Alaska, a distance of 195 miles, and which road and equipment cost approximately twenty million dollars and is now worth that amount, and is now operating and is solvent and able to respond and pay any final judgment obtained in this case, and unless a supersedeas bond is allowed said Writ of Error and its effect will be defeated.

R. J. BORYER.



Subscribed and sworn to before me this the 19th day of July, A. D. 1913.

[Seal]

R. E. ROBERTSON,

Notary Public in and for the District of Alaska,  
Residing at Juneau. Commission Expiring  
June 19th, 1917.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [294]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order on Supersedeas Bond.**

Copper River & Northwestern Railway Company and the Katalla Company, by their attorney, having filed on the 19th day of July, A. D. 1913, petition for a Writ of Error, Assignment of Errors, and Bill of Exceptions, and said date having been fixed as a day for settling and signing said Bill of Exceptions,

and said Copper River & Northwestern Railway Company and the Katalla Company, by their attorney, having presented a supersedeas bond for approval on said date, J. H. Cobb, attorney for plaintiff, defendant in error, objected to the Court approving said Bond as a supersedeas or allowing a supersedeas, for the reason that the Court has no power to approve or allow said bond as a supersedeas bond or allow a supersedeas after the expiration of sixty (60) days, Sundays excluded, from the rendition of the Judgment. This objection of plaintiff having been taken under advisement and having been duly considered,—

It is hereby ORDERED, ADJUDGED and DECREED that said objection be sustained, for the reason that after the expiration of sixty (60) days, Sundays excluded, from the date of the rendition of the Judgment, this Court does not have power to approve said bond or allow a supersedeas, the time for approving same under the statute having passed.

To which ruling the Copper River & Northwestern Railway Company, and Katalla Company, by their attorney, duly excepted and their exception was allowed.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska,  
Third Division. Jul. 29, 1913. Arthur Lang,  
Clerk. By V. A. Paine, Deputy. [295]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order Staying Execution.**

Copper River & Northwestern Railway Company and Katalla Company having presented a Bond to act as a supersedeas bond pending appeal in the above case, and objection having been raised by J. H. Cobb, attorney for plaintiff in this case, to the Court having power to approve said bond as a supersedeas bond, and the said J. H. Cobb having stated in open court that execution in this case would be withheld until counsel for defendants has an opportunity to present its application for stay of execution and supersedeas bond to the United States Circuit Court of Appeals for the Ninth Circuit at the session of said Court in Seattle, Washington, in September 1913,—

NOW, THEREFORE, it is HEREBY OR-

DERED, ADJUDGED and DECREED that execution in this case be withheld until counsel for defendant, plaintiffs in error, has an opportunity to present its application for supersedeas bond and stay of execution to the United States Circuit Court of Appeals for the Ninth Circuit at the session of said Court in Seattle, in September, 1913.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [296]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY and COPPER RIVER &  
NORTHWESTERN RAILWAY COM-  
PANY,

Defendants.

**Assignment of Errors.**

Comes now the defendants in the above-entitled cause and files the following assignment of errors

upon which they will rely upon its prosecution of the Writ of Error in the above-entitled cause:

1.

The Court erred in excusing the first special venire drawn for the purpose of completing the jury for the April term of Court, and retaining the second special venire which was drawn from and restricted to Valdez and Seward as per order of Court, to which the plaintiffs in error duly excepted and their exception allowed.

2.

The Court erred in denying the defendants' challenge to Juror McNiece, for the reason that said juror on examination admitted that he had served as a juror within the past year in the Third Division in the District Court, to which defendants duly excepted and exception was allowed. Examination was as follows:

Q. (Mr. BORYER.) "You reside in Valdez?"

A. "Yes."

Q. "How long have you resided in Valdez?"

A. "About three years and a half."

Q. "Have you served as a juror within the past year [297] in this division, in this court, as a juror or grand juror?"

A. "Just on a special venire, one case."

Q. "Where was that?"

A. "Valdez."

Q. "At what term of Court?"

A. "The last term of court at Valdez."

Q. "What month was that?"

A. "That was about two months ago."

Q. "Not over two months ago?"

A. "No, not over two months ago."

Mr. BORYER.—"We challenge the juror for cause."

Q. (By the COURT.) "You were just called to serve on one case?"

A. "Yes, a special venire, on one case."

Q. "And you were excused immediately after the one case?" A. "Yes, sir."

By the COURT.—"The challenge will be denied."

Defendants allowed an exception to the ruling.

3.

The Court erred in permitting the witness E. F. Wood over defendants' exception duly excepted to and exception allowed, to the following testimony:

Q. (Mr. COBB.) "Now, I want you to tell the jury the best you can what condition Mr. Reeder was in when you got there and during the time you were there working to get him out—what he was undergoing, if he seemed to be undergoing anything. Try to give the picture that is in your mind of Mr. Reeder when he was underneath there and how he was buried and all about it."

Mr. BORYER.—"We object to the question unless it is shown that he knows what the plaintiff was undergoing."

By the COURT.—"He may answer the question."

Defendant allowed an exception.



A. "He was buried under the timbers and I heard him [298] talking but I couldn't see him. He must have been suffering because I heard him call on the boys to stop them sawing and come and get him."

Mr. BORYER.—"We move to strike the answer as a conclusion and not responsive to the question."

Motion denied. Defendant allowed an exception.

4.

The Court erred in sustaining plaintiff's objection to witness E. F. Wood testifying for what purpose the crew was tearing out the old work in the tunnel, to which defendants duly excepted and exception was allowed, said testimony being as follows:

Q. (Mr. BORYER.) "What were you doing at that tunnel?"

A. "We had the pile-driver in there, the track-driver, rather—we were tearing out some old work that was on this end of the tunnel."

Q. "Tearing out some old work?"

A. "Yes, sir, temporary work."

Q. "For what purpose?"

Mr. COBB.—"We object to that; this was 300 ft. away from where this accident happened."

Objection sustained.

Defendants allowed an exception.

5.

The Court erred in permitting plaintiff to introduce Exhibits "C" and "D" and evidence regarding the Bill of Ladings, and in overruling the objection of plaintiff in error to said testimony, to which rul-

ing plaintiffs in error duly excepted and exception allowed. The proceedings being as follows:

Q. "I will ask you to examine a Bill of Lading that appears to be made out to you, made out to McDonald & Reidy—that is one of the bills of lading made out to your firm."

A. "Yes, sir."

Q. "Did you do quite a good deal of shipping in 1910 and 1911?"

A. "We did considerable." [299]

Q. "Is that a specimen of the sort of bills of lading you got?"

A. "Yes, sir."

Mr. COBB.—"I offer this in evidence."

Mr. BORYER.—"I object to it for the reason that it is a Bill of Lading that purports to carry goods from Cordova to Miles Glacier, when this accident happened at Mile 131, some eighty miles beyond, a destination named in the bill of lading."

Mr. COBB.—"It is over a portion of the same road."

Mr. BORYER.—"I think not."

By the COURT.—"If you connect it up it will be all right."

Q. "These goods were over the Copper River Railway?"

A. "Yes, sir."

By the COURT.—"It may go for what it shows, showing that shipments to Miles Glacier."

Mr. BORYER.—"The reason I made that

statement—because this road has been under construction. There were portions of this road that was constructed and trains were run over that portion of it. There were other portions that were not constructed, that is, it was partially constructed, temporary tracks were laid down but there was no hauling over the other portion of the road. There were licenses that were issued which is available to the plaintiff and issued for only a portion of the road and did not extend beyond certain points.”

By the COURT.—“The objection is overruled; as far as the admission of this particular offer is concerned, it may be admitted for the purpose indicated by the Court.”

Mr. COBB.—“And one of the purposes is to show that the Katalla Company during the year 1911 was carrying on the business of common carrier by rail and was the railroad company.”

Mr. BORYER.—“I wish to make the further objection, for the reason that the bill of lading does not purport to be a bill of lading of the date that the accident happened to the plaintiff.”

By the COURT.—“What is the date of it?”

Mr. COBB.—“May 4, 1911.”

By the COURT.—“Proceed—it may be admitted.”

Defendant allowed an exception.

The Bill of Lading is marked Plaintiff's Exhibit “C” and read to the jury by Mr. Cobb. [300]

Q. “You say you received a great many bills of lading of which that is a specimen?”

A. "Yes, sir."

Q. "Did you receive that bill of lading also, for goods shipped?" (Hands witness paper.)

A. "Yes, sir."

Mr. COBB.—"We offer that in evidence also in connection with the witness' testimony."

Mr. BORYER.—"We object to it for the reason that the receipt or paper purports to be a paper with its destination at Miles Glacier, Mile 49, and for the further reason that it bears the date of May 8—What date is that, Mr. Reidy?"

The WITNESS.—"May 3d."

Mr. BORYER.—"For the further reason that the bill of lading shows, or the paper, that it was issued on May 3, 1911, and is irrelevant and immaterial."

Objection overruled. Defendant allowed an exception. It is admitted as Plaintiff's Exhibit "D."

Mr. COBB.—"That is all."

6.

The Court erred in permitting plaintiff to introduce Exhibits "E" and "F" and evidence regarding the Bill of Lading and *it* overruling the objection of plaintiff in error to said testimony, to which ruling plaintiff in error duly excepted and exception was allowed. The proceedings being as follows:

Q. "I hand you a bill of lading dated August 16, 1911, purporting to be dated Cordova, Alaska, and issued to O. M. Kinney and ask you if you ever saw that before."

A. "Yes, sir."

Q. "Was that issued to you?"

A. "Yes, sir."

Q. "And the goods shipped out on the line of the road?"

A. "Yes, sir."

Mr. COBB.—"We offer that in evidence."

Mr. BORYER.—"We object to it for the reason that it is not the [301] proper way of showing that the Defendant, Katalla Company, was a common carrier; for the further reason that the bill of lading shows that it was issued on the 16th day of August, 1910, and for the further reason that the goods were consigned to a point this side of the point where the accident happened."

Objection overruled. Defendant allowed an exception. It is marked Plaintiff's Exhibit "E" and admitted in evidence.

Mr. COBB.—"I am going to offer this one in evidence, of the same date."

Same objection; same ruling. Defendant allowed an exception. It is marked Plaintiff's Exhibit "F" and admitted in evidence.

Q. "That was issued to you, was it, in the due course of business?"

A. "Yes, sir."

Mr. BORYER.—"I take it my exception goes to all this evidence."

By the COURT.—"Yes, sir."

Q. "I offer you some dated along in March, 1910, and ask you if that was issued to you?"

A. "No, sir."

Q. "Did you ship any goods out in 1911?"

A. "I think I did; yes."

Q. "Did you get the same kind of bill of lading, from the Katalla Company, operating the Copper River & Northwestern Railway?"

A. "I don't remember now—I shipped from the time the road started. I couldn't tell you what kind of bill of lading I got."

Q. "You have seen a great many of these Katalla Company bills of lading issued here?"

A. "Yes, sir."

Mr. COBB.—"That is all."

7.

The Court erred in permitting plaintiff to introduce in evidence Bills of Lading marked Exhibits "G" and "H" and in overruling the objection of plaintiffs in error to said exhibits, to which ruling plaintiffs in error excepted [302] and exception was allowed. The proceedings were as follows:

Q. (Mr. COBB.) "Did you have occasion during the year 1911 to ship any goods out over the line of the Copper River & Northwestern Railway?"

A. "Not under the Northwestern Hardware Co.'s firm name—the firm's name was Feldman and Gerber in 1911—the firm name changed."

Q. "I will ask you if you ever saw this before (handing witness paper)."

A. "Yes, sir."

Q. "Were these bills of lading issued for shipments on the Copper River & Northwestern Railroad?"

A. "Yes, sir."



Q. "Examine both of them."

A. "Yes, sir."

Q. "Freight paid on them?"

A. "Yes, sir."

Mr. COBB.—"We offer these in evidence."

By the COURT.—"They will be admitted and appropriated marked."

Mr. BORYER.—"We ask for an exception to the ruling. Exception allowed." (They are marked Exhibits "G" and "H.")

8.

The Court erred in denying the Motion made by the plaintiffs in error at the close of the testimony for a Nonsuit of said action as to both defendants, to which each defendant excepted and exception was allowed. The Motions were as follows:

"Comes now the defendant, the Katalla Company, by its attorney, R. J. Boryer, and moves the Court to grant a nonsuit to this defendant, for the reasons:

1.

That the plaintiff has closed his case and has failed to establish that the Katalla Company was a common carrier at the time that the plaintiff was injured, and failed to establish that the Katalla Company was doing a common carrier business over the line and at the place where the plaintiff was injured. [303]

2.

That this action is brought under the Federal Employers' Liability Acts of 1906, 1908 and 1910, which is in derogation of the common law, and

having failed to establish that the Katalla Company was doing a common carrier business at the time of the injury to plaintiff and over the line at the point where the plaintiff was injured, cannot recover at common law in this action.

## 3.

For the further reason that the evidence in the case introduced by the plaintiff conclusively shows that the plaintiff was employed in retimbering and strengthening of the tunnel upon which he was working, for the purpose of making said tunnel safe, and that he was injured by reason of one of the hazards incident to his work which he knew while working on said tunnel.

## 4.

For the further reason that the evidence shows that the plaintiff was a co-laborer and a fellow-servant of the laborer who knocked the brace off of the frame-work of the tunnel, and that the knocking off of the brace in said tunnel was the cause of the cave-in which injured the plaintiff.

## 5.

For the further reason that the plaintiff has failed to establish his case."

"Comes now the defendant, the Copper River & Northwestern Railway Company, by its attorney, R. J. Boryer, and moves the Court to grant a nonsuit to this defendant, for the reasons:

## 1.

That the plaintiff has closed his case and has failed to show that the plaintiff was employed

by the Copper River & Northwestern Railway Company, and has failed to show that the plaintiff was in the employ of the Copper River & Northwestern Railway Company at the time that he received his injury complained of in this action.

## 2.

For the further reason that the plaintiff has failed to show that the defendant, Copper River & Northwestern Railway Company, was doing a common carrier business at the time the plaintiff was injured as alleged in his complaint, and for the further reason that the plaintiff has failed to show that the Copper River & Northwestern Railway Company was doing a common carrier business over the line at the place where the plaintiff received his injury, and for the further reason that this action is based upon the Federal Employers' Liability Act as passed by Congress of United States in 1906, 1908 and 1910, which Act precludes a recovering at common law. [304]

## 3.

For the further reason that the evidence shows that the plaintiff was employed at and was engaged in retimbering, strengthening and making an unsafe tunnel safe, which facts were admitted by the plaintiff to be known by him prior to the happening of his injury and was injured by reason by one of the risks incident to his work.

## 4.

For the further reason that the plaintiff has failed to show that this defendant failed and neglected to suitably timber the said tunnel so as to protect the workmen, by using old and weaken timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon.

## 5.

For the further reason that the plaintiff has failed to establish his case against this defendant.”

## 9.

The Court erred in refusing to direct a Verdict as to each and both of the defendants' Motions for a Directed Verdict, to which defendants excepted and exception was allowed. The proceedings were as follows:

By the COURT.—“The motions are denied in each case and exception allowed. I have these two questions in my mind that I will instruct the jury on, and it may be that I will have occasion to instruct the jury that there is not sufficient evidence for the defendants to be held as common carriers—I don't know about that.”

“Comes now the Katalla Company, by its attorney, R. J. Boryer, and moves the Court for a Directed Verdict in this action for the reasons:

## 1.

That the plaintiff has closed his case and has

failed to establish that the Katalla Company was a common carrier at the time that the plaintiff was injured, and failed to establish that the Katalla Company was doing a common carrier business over the line and at the place where the plaintiff was injured.

2.

That this action is brought under the Federal Employers' Liability Acts of 1906, 1908 and 1910, which is in derogation of the common law, and having failed to establish that the Katalla Company [305] was doing a common carrier business at the time of the injury to plaintiff and over the line at the point at which the plaintiff was injured, cannot recover at common law in this action.

3.

For the further reason that the evidence in the case introduced by the plaintiff conclusively shows that the plaintiff was employed in retimbering and strengthening the tunnel upon which he was working for the purpose of making said tunnel safe, and that he was injured by reason of one of the hazards incident to his work which he knew while working on said tunnel.

4.

For the further reason that the evidence shows that the plaintiff was a co-laborer with and a fellow-servant of the laborer who knocked the brace off of the frame-work of the tunnel, and that the knocking off of the brace in said tunnel

was the cause of the cave-in which injured the plaintiff.

## 5.

For the further reason that the plaintiff has failed to establish his case.

## 6.

For the further reason that the plaintiff has admitted that he was familiar with and knew all of the dangers incident to his work and by which he was injured.”

“Comes now the Copper River & Northwestern Railway Company, by its attorney, R. J. Boryer, and moves the Court for a directed verdict in this action for the reasons:

## 1.

That the plaintiff has closed his case and has failed to show that the plaintiff was employed by the Copper River & Northwestern Railway Company, and has failed to show that the plaintiff was in the employ of the Copper River & Northwestern Railway Company at the time that he received his injury complained of in this action.

## 2.

For the further reason that the plaintiff has failed to show that the defendant Copper River & Northwestern Railway Company was doing a common carrier business at the time the plaintiff was injured as alleged in his complaint, and for the further reason that the plaintiff has failed to show that the Copper River & Northwestern Railway Company was doing a common carrier business over the line and at the place



where the plaintiff received his injury, and for the further reason that this action is based upon the Federal Employers' Liability Acts as passed by Congress of the United States [306] in 1906, 1908 and 1910, which acts preclude a recovering at common law.

## 3.

For the further reason that the evidence shows that the plaintiff was employed at and was engaged in retimbering, strengthening and making an unsafe tunnel safe, which facts were admitted by the plaintiff to be known by him prior to the happening of his injury, and was injured by reason of the risks incident to his work.

## 4.

For the further reason that the plaintiff has failed to show that this defendant failed and neglected to suitably timber the said tunnel so as to protect the workmen, by using old and *weaken* timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon.

## 5.

For the further reason that the plaintiff has failed to establish his case against this defendant.

## 6.

For the further reason that the plaintiff has admitted that he was familiar with and knew all of the dangers incident to his work and by which he was injured."

## 10.

The Court erred in giving the following instruction during the course of the charge to the jury, to which instruction the plaintiffs in error duly excepted and its exception was allowed:

Instruction *exception* to:

“You are first instructed that an employer of labor is obliged and bound to furnish a reasonably safe place in view of the circumstances of the labor or the work to be done, the surrounding circumstances, and maintain it as a reasonably safe place for the employees to work in.”

## 11.

The Court erred in giving the following instruction during the course of the charge to the jury, to which instruction the plaintiffs in error duly excepted and its exception was allowed. [307]

Instruction *excepted* to:

“Taking those two broad principles of law, your duty then will be to decide in this case, what was the cause of Mr. Reeder’s injury, about which there is no doubt or no contention—that is, the extent of the injury or accident may be a question for you,—what was the real, proximate cause of his injury.”

## 12.

The Court erred in giving the following instruction during the course of the charge to the jury, to which instruction the plaintiffs in error duly excepted and their exception was allowed.

Instruction *excepted* to:

“In my opinion law is common sense. We

may differ sometimes as to what is common sense, the broad term,—so sometimes we may differ as to the law. Since I believe it to be founded on common sense, I am going to try to take you along with me in the reasoning of the law, as well as giving you the law in this case.”

## 13.

The Court erred in giving the following instruction during the course of the charge to the jury, to which instruction the plaintiffs in error duly excepted and their exception was allowed.

Instruction excepted to:

“It has been, it seems to me justly, held that if the proximate cause of an injury such as this, was on the part of the employer of the labor, that the employer is liable. It has been held upon the other hand, that if the proximate cause of the injury was upon the plaintiff himself, Mr. Reeder in this case, or upon one of his fellow-workmen who were working with him, and through no fault of the defendants, then he could not recover. To illustrate what the law believe to be correct and what is common sense, I will give you two illustrations, founded upon two cases.

Imagine, if you will, that two men are working at this table, one facing this way and one this way and two men similarly working at that table over there, say upon tin or iron plate ware. One of the workmen would be standing with his back to an alleyway 10 or 12 feet wide and the other facing it. That it was the duty of those em-

ployed to stand here and do their work and perform their duties. While he was so working, two other men from some other part of the same room came along with a truck, we will say, a four-wheeled low-truck, with an ordinary handle, with a cross-piece at the end, that you see upon trucks around railroad freight stations outside, where the wheel works very easily under the first axle. And while they were coming in with a load of tinware that was used upon the table in the ordinary course of business, one of the wheels, we will say, dropped into a little hole in the floor, a hole sufficient, a hole sufficiently large with [308] *with* the load upon it to stop the truck for a moment, and the man at the tongue handle, or whatever you may call the steering apparatus by which he was pulling, kinder wiggled it as a man naturally would, attempting to pull the load from the hole, with the other man pushing behind the load. That while he was so wiggling and pulling and the other pushing to get it from the hole, a lot of tin or iron ware fell off the truck and injured this first man standing here with his back to that board and to that hole in the floor.

Now, in that case, altho' the plaintiff there and the boy or man standing here might have known of the hole, it is the law and was so held that even though he knew that, he did not as a part of his employment there have a right to assume or anticipate that he might be injured in the way he was by reason of that hole. That by

reason of that hole being in the floor it was the duty upon the employer of these men in that room to have remedied that hole and that, altho' probably the wiggling of the tongue on that load at that particular time caused the tinware to slip off the truck, the real cause, the proximate cause of that injury, was the defect in the floor.

The case of the opposite result, in which the actions of a fellow workman exonerated an employer of labor from an injury was that in which a common derrick was used, which consists, as you all know, I presume, of a boom and a mast, the mast being the upright piece and the boom goes off at an angle. In that instance men were employed to erect the boom and mast and when they were about completed, the base, which would probably be a long piece of wood, depending of course upon the size, length, etc., of the derrick, probably we will say the length of that rug and in dimensions proportionate to hold the load it was calculated to hold—that piece of wood had been placed in position and holes bored, through which iron bolts of sufficient size were to be put and the nuts screwed down, of course, to hold it in position. For some reason, either the bolts had been mislaid or had not been completed or something, on the completion of the work on a certain day, they walked away without putting those bolts in; that was to be left to be completed on a subsequent day but before the derrick was to be used.

Now, it happened that the engineer who had



control of the machinery running that derrick knew that, as well as the foreman and the man who was injured. The next day the foreman, who was a fellow-servant to the injured man, ordered an attachment to be made to a piece of stone and the engines to be started and the stone lifted by that derrick. The first pull did not succeed in lifting the stone. The foreman told him to go ahead and lift it; anyhow he made another pull and of course the bottom of the derrick, not being fast upon the resting piece as it should have been, it very naturally buckled out and gave way at the bottom and the boom of the derrick hit the plaintiff and injured him.

Now, the company in that case was held not liable because they claimed that the proximate cause in that case was the negligence of the foreman who knew that the bolts were not put in there and the company had done all they could to prevent them going ahead and using that derrick until it was [309] fixed. That that was a risk that the company could not in reason have apprehended would happen. They expected that the men would do what their good common sence would tell them to do and they had no right under those circumstances to anticipate that a man would so far forget and fail to do his duty as to start up and use a derrick before the bottom was fastened, and the man in charge in the erection of the derrick had ordered them not to so use the derrick."



## 14.

The Court erred in failing and refusing to give to the jury the following instruction requested by plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that the plaintiff alleges in his complaint that the defendants’ negligent acts consisted in the failure of the defendants to suitably timber and protect the workmen employed in said tunnel from the dangers of cave-in and falling of material constituting the roof of the bore of said tunnel, and said negligent acts consisted in the fact that the defendants failed and neglected to suitably timber said tunnel so as to protect the workmen by using old and *weaken* timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made, so as to support the weight which would necessarily be imposed thereon; therefore you are instructed that before the plaintiff can recover in this case he must establish by the preponderance of the evidence that the injury to plaintiff was caused by the defendants using old and *weaken* timbers and timbers of insufficient size and strength to have the construction of the roof of said tunnel properly made so as to support the weight which would necessarily be imposed thereon.”

## 15.

The Court erred in failing and refusing to give to

the jury the following instruction requested by plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that the burden is upon the plaintiff to establish his cause of action by a preponderance of evidence and that the plaintiff cannot recover unless he proves by preponderance of the evidence not only that the defendants were negligent, but also that the defendants’ negligence was the cause of the injury to the plaintiff, and if he fails to establish these facts by the preponderance of the evidence the plaintiff cannot recover.”

16.

The Court erred in failing and refusing to give to the jury [310] the following instruction requested by plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find that the Katalla Company was at the time of the injury to the plaintiff doing a common carrier business at the point or place where plaintiff was injured, and that the plaintiff was working for the Katalla Company, which work or employment consisted in repairing the tunnel or making the tunnel safe because it was in a dangerous condition, and the plaintiff knew it was in a dangerous condition, then you are instructed that the plaintiff assumed the ordinary risks and dangers of his employment that were

known to him and those that might be known to him by the exercise of ordinary care and foresight and he cannot recover in this case.”

17.

The Court erred in failing and refusing to give to the jury the following instruction requested by plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if the plaintiff was engaged in repairing or strengthening or re-timbering the tunnel that was in an unsafe condition and he failed along with his co-laborers to take precautions in bracing the timbers and the tunnel caved in by reason of the fact that the plaintiff along with his co-laborers failed or neglected to brace the timbers or failed to take any steps to prevent the cave-in while they were working and the defendant had suitable timbers convenient which the plaintiff could have used to strengthen the timbers in the tunnel and prop the tunnel, and failed to do so, then you are instructed that the plaintiff cannot recover in this case.”

18.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find from the evidence that the plaintiff’s injury was

caused by reason of the negligence of a co-worker or fellow-servant of the plaintiff that he cannot recover in this action.”

## 19.

The Court erred in failing and refusing to give to the jury the [311] following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find from the evidence that the Katalla Company was doing a common carrier business at the time and through the tunnel where plaintiff received his injuries, and the plaintiff was engaged in and of making the tunnel safe by timbering said tunnel, or by strengthening the timbers of said tunnel, then you are instructed that the plaintiff by the acceptance of this employment assumes the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight and he cannot recover in this action.”

## 20.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find from the evidence that the Katalla Company was not a common carrier at the time and place of the

accident to plaintiff and that the plaintiff was engaged in work of making the tunnel safe to prevent caving in and falling of earth by timbering said tunnel or by replacing and strengthening the timbers of the tunnel, and while employed in this work he received his injury, you are instructed that the plaintiff assumes the hazards incident to such work and he cannot recover.”

21.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find from the evidence that the Katalla Company was not a common carrier at the time and place where plaintiff was injured, and that the plaintiff was employed by the Katalla Company and was engaged in the repair of the tunnel that was unsafe, you are instructed that by the plaintiff accepting this employment he assumes the hazards incident to such work and cannot recover in this case.”

22.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiff in error, which was [312] duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find from the

evidence that the Katalla Company was not doing a common carrier business at the time and place where plaintiff received his injuries and the plaintiff was engaged in the repair of the tunnel to keep the dirt and earth from caving in and of making the tunnel safe, then you are instructed that the plaintiff by the acceptance of this employment assumes the ordinary risks and dangers of his employment that are known to him and those that might be known to him by the exercise of ordinary care and foresight and cannot recover.”

## 23.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you do find from the evidence that the Katalla Company was not a common carrier when the plaintiff was injured, you are instructed that if the plaintiff was engaged in the work of making the tunnel safe, then you are instructed that the plaintiff assumed the ordinary and known dangers of the place and he cannot recover.”

## 24.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.



## Instruction:

“You are instructed that before you can find that the Katalla Company was at the time and place where the plaintiff was injured a common carrier, you must find from the evidence that the Katalla Company was at that time offering or holding itself out to carry goods for all persons who tendered or offered them the price of carriage, or find from the evidence that the Katalla Company was carrying goods for all persons who offered or tendered them the price for carrying same through the tunnel where plaintiff was injured.”

25.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in errors, which was [313] duly excepted to, and exception allowed.

## Instruction:

“You are instructed that the plaintiff has sued both the Katalla Company and the Copper River & Northwestern Railway Company, alleging that each of them are separate corporations, and that the plaintiff was in the employ of both the Katalla Company and the Copper River & Northwestern Railway Company, therefore you are instructed that before you can find that the plaintiff was in the employ of both the Katalla Company and the Copper River & Northwestern Company, you must find from the evidence that the relation of master and servant existed between the Katalla Company and the Copper

River & Northwestern Railway Company at the time of the injury, and if you find that the relation of master and servant did not exist between the plaintiff and Katalla Company at the time of injury, then the plaintiff cannot recover against the Katalla Company, and if you find the relation of master and servant did not exist between the Copper River & Northwestern Railway Company at the time the injury happened to plaintiff, then you cannot recover against the Copper River & Northwestern Railway Company.”

## 26.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

## Instruction:

“You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired for making it safe and the plaintiff was injured while assisting in either the work of repairing or fixing or causing the tunnel to be fixed so as to make it safe, then you are instructed that the law does not require of the defendant to furnish either a safe nor a reasonably safe place for the plaintiff to work, and if you find that the plaintiff was injured by the necessary progress of the work in the repairing, fixing and strengthening of the tunnel, he assumed the

risks and cannot recover in this action.”

27.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if the plaintiff was engaged in strengthening and retimbering the frame of the tunnel at the [314] place where he was injured for the purpose of making the tunnel safe, or if you find that the tunnel was being repaired to make it safe and the plaintiff was injured by reason of one of his co-workers taking or knocking one of the braces off and that was the cause of the falling in of the timbers and earth which injured the plaintiff, then you are instructed that the plaintiff cannot recover in this action.”

28.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if you find that the Katalla Company was not doing a common carrier business at the time that the plaintiff was injured, and also doing a common carrier business over that portion of the railroad line upon which the plaintiff was working and at the place

where he was injured, you are instructed that the plaintiff cannot recover in this action.”

29.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that where a servant is employed to assist in repairing or opening up a tunnel which is in a bad condition and out of repair and not being used by a common carrier, the master does not owe to him the same duty to furnish a safe place as to that portion of its line out of repair and not being used as it does to his servant engaged in the operation of trains upon the roadbed in the ordinary course of business, and he is therefore subjected to greater risks and perils than he would, under ordinary circumstances, and in entering this service to perform this work he assumes the hazards incident to the work and one of the hazards is the condition of the tunnel he is engaged to repair and you are therefore instructed that if the plaintiff was injured by reason of the caving in of the tunnel because of the fact that the tunnel was in a bad condition and the plaintiff was assisting in fixing or repairing this bad condition, then you are instructed that the plaintiff cannot recover.”

30.

The Court erred in failing and refusing to give to

the jury [315] the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that the plaintiff is presumed to know of dangers that he has an opportunity to observe and that he must inform himself of open, obvious risks, and if he does not do this and is injured by reason of his failure to do so, then he cannot recover.”

31.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that the plaintiff assumes the risks of all dangers that he has an opportunity to observe that are open, and that if the plaintiff accepted employment of the defendant in repairing or strengthening the tunnel for the purpose of making it safe and said tunnel was in an unsafe condition and needed repairing, that the plaintiff by accepting such employment assumed all the ordinary and usual risks and perils incident to such employment whether it was dangerous or otherwise.”

32.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.



Instruction:

“You are instructed that the law requires a person, when doing a dangerous piece of work, to exercise such care for his safety as an ordinary prudent man would exercise under the circumstances, and unless he exercises such care and is injured by reason of not having exercised such care, he cannot recover.”

33.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed:

Instruction:

“You are instructed that if the plaintiff had actual or constructive knowledge of danger of working at the point where the accident happened, and that a reasonably prudent man [316] under the circumstances would exercise due care to avoid danger, and the plaintiff was injured by reason of his failure to use ordinary care, he is guilty of contributory negligence and cannot recover.”

34.

The Court erred in failing and refusing to give to the jury the following instruction requested by the plaintiffs in error, which was duly excepted to, and exception allowed.

Instruction:

“You are instructed that if the plaintiff continued working with knowledge, actual or constructive, of dangers which an ordinary pru-



dent man would refuse or subject himself to, he is guilty of contributory negligence and cannot recover.”

## 35.

The Court erred in denying the defendant's motion for new trial herein and in its order and judgment overruling said motions and granting judgment in favor of the plaintiff and against said defendants for the amount of the verdict found by the jury in favor of the plaintiff with costs, which order and judgment were duly excepted to by the defendants and its exception allowed by the Court; said motions were based on all the files, records and proceedings herein, and was made upon the following grounds specified therein and each thereof, to wit:

## 1.

“Comes now the Katalla Company by its attorney, R. J. Boryer, and moves the Court for a new trial in this case for the following reasons:

That the plaintiff admitted in his evidence that at the time he was injured he was engaged in retimbering and strengthening the tunnel because said tunnel was in an unsafe condition; that he knew it was in an unsafe condition and testified in this case that his injury was received from an accident from the caving-in of the tunnel, which cave-in was caused by the faulty construction or joinder of the caps and segments supporting the roof of the tunnel. That he was familiar with and knew of the manner in which the caps and segments were constructed or joined, and that he repeatedly noticed the con-

struction and joinder of the caps and segments, knew that they were dangerous, and, knowing these facts, admitted that he continued work without protest and admitted that he was injured by reason of the cave-in of said tunnel because [317] of the improper constructions or joinder of said caps and segments, all of which were known to him at the time of the cave-in.

## 2.

For the further reason that said verdict is against both the Copper River & Northwestern Railway Company and Katalla Company, and it was not shown in the evidence that the plaintiff was employed by the Copper River & Northwestern Railway Company at the time of his injury or that it was in any way connected with this defendant, Katalla Company.

## 3.

For the further reason that the verdict in this case is contrary to the law and instructions and evidence in the case.

## 4.

For the further reason that said verdict is excessive.”

“Comes now the Copper River & Northwestern Railway Company, by its attorney, R. J. Boryer, and moves the court for new trial in this case for the following reasons:

## 1.

That the plaintiff failed to show or prove by the preponderance of the evidence and failed in any manner to show that the plaintiff was ever

in the employ of the Copper River & Northwestern Railway Company, and failed to show that he was in the employ of the Copper River & Northwestern Railway Company at the time he received his injury.

## 2.

For the reason that the plaintiff has failed to show that the Katalla Company and the Copper River & Northwestern Railway Company are in any manner or way connected with each other or that the Copper River & Northwestern Railway Company or any of its agents were in any way connected with the work performed by the plaintiff at the time he was injured, and failed to show that the Copper River & Northwestern Railway Company either owned or was in any way connected with the line of road mentioned in plaintiff's complaint at the time of the injury to the plaintiff.

## 3.

For the further reason that the plaintiff admitted that he was familiar with the work that he was performing, knew that it was dangerous, knew of the construction of the cap and segment, which he claimed caused his injury, and knew of the danger of such cap and segment at the time he was injured and knew of, prior to his injury, the dangers that caused his injury.

## 4.

For the further reason that said verdict is against the law and evidence of this case.

5.

For the further reason that said verdict is excessive.”

WHEREFORE, the defendants herein pray that said judgment may be reversed, vacated and set aside, and that the verdict found by the jury [318] at the close of the trial herein on which said judgment was based, may be vacated and set aside and that the Circuit Court may be ordered to dismiss said action or to award a *venire de novo* for the trial of the issues between the plaintiff and defendants herein, and for such other and further relief, or both, in the premises as may be proper.

R. J. BORYER,  
Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. July 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, 3d Division. July 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [319]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Petition [of Copper River & N. W. Ry. Co.] for Writ  
of Error.**

Comes now the Copper River & Northwestern Railway Company and Katalla Company, defendants herein, and complains and stated that on 5th day of May, A. D. 1913, the above-entitled court entered judgment herein in favor of the plaintiff above named, and against the defendants above named, in which judgment, and in the proceedings had prior thereto in the above-entitled cause, certain errors were committed to the prejudice of these defendants, all of which will appear in the detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, these defendants pray that a writ of error issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendants further pray for an order fixing the amount of bond for a supersedeas in said cause.

Dated this the 19th day of July, A. D. 1913.

R. J. BORYER,  
Attorney for Defendants. [320]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, and KATALLA COM-  
PANY,

Defendants.

**Writ of Error [Copy].**

The President of the United States of America, to  
the Honorable Judge of the District Court for  
the Territory and District of Alaska, Third  
Division, GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment upon a verdict, which  
is in the said District Court before you, or some of  
you, between Daniel S. Reeder, the original plaintiff,  
and the defendant in error, and the Copper River &  
Northwestern Railway Company and Katalla Com-  
pany, the original defendants and plaintiffs in error,  
manifest error hath happened to the damage of the  
said Copper River & Northwestern Railway Com-  
pany and Katalla Company, plaintiffs in error, as by  
their answer appears, we being willing that error, if  
any hath been, should be duly corrected and full and  
speedy justice done to the parties aforesaid in this  
behalf, do command you, if judgment be therein  
given, that then, under your seal, distinctly and  
openly, you send the record and proceedings afore-





*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Writ of Error [Original].**

The President of the United States of America, to  
the Honorable Judge of the District Court for  
the Territory and District of Alaska, Third Di-  
vision, GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment upon a verdict, which  
is in the said District Court before you, or some of  
you, between Daniel S. Reeder, the original plain-  
tiff, and the defendant in error, and the Copper  
River & Northwestern Railway Company and  
Katalla Company, the original defendants and plain-  
tiffs in error, manifest error hath happened to the  
damage of the said Copper River & Northwestern  
Railway Company and Katalla Company, plaintiffs  
in error, as by their answer appears, we being will-  
ing that error, if any hath been, should be duly cor-  
rected and full and speedy justice done to the parties  
aforesaid in this behalf, do command you, if judg-



Filed in the District Court, Territory of Alaska,  
Third Division. Jul. 29, 1913. Arthur Lang, Clerk.  
By V. A. Paine, Deputy. [322C]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Citation [on Writ of Error—Copy].**

United States of America.

The President of the United States to Daniel S.  
Reeder, Greeting:

You are cited and admonished to be and appear  
in the United States Circuit Court of Appeals for  
the Ninth Circuit at the courtroom of said court in  
the city of San Francisco, in the State of California,  
within 30 days after the date of this citation, pur-  
suant to writ of error filed in the clerk's office of the  
District Court for the Territory of Alaska, Third  
Division, wherein the Copper River & Northwest-  
ern Railway Company and Katalla Company are  
plaintiffs in error, and you are defendant in error,  
to show cause, if any there be, why judgment in said  
writ of error mentioned should not be corrected and

speedy justice not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 19th day of July, in the year of our Lord one thousand nine hundred and thirteen.

FRED M. BROWN,  
Judge in the District Court for the Territory and  
District of Alaska, Third Division. [323]

Copy of this Citation received and service acknowledged this the 19th day of July, A. D. 1913.

J. H. COBB,  
Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. July 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, 3rd Division. July 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [324]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, and KATALLA COM-  
PANY,

Defendants.

**Citation [on Writ of Error—Original].**

United States of America.

The President of the United States to Daniel S. Reeder, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said Court, in the city of San Francisco, in the State of California, within 30 days after the date of this citation, pursuant to writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein the Copper River & Northwestern Railway Company and Katalla Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 19th day of July, in the year of our Lord one thousand nine hundred and thirteen.

FRED M. BROWN,

Judge in the District Court for the Territory and District of Alaska, Third Division. [324A]

Copy of this Citation received and Service acknowledged this the 19th day of July, A. D. 1913.

J. H. COBB,

Attorney for Defendant in Error. [324B]



[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [324C]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Acknowledgment of Service of Papers on Writ of  
Error.**

Service of the Petition for Writ of Error, Order Allowing Writ of Error, of the Assignment of Errors, Bond on Writ of Error, of the Citation on Writ of Error, and of Writ of Error in the above-entitled cause, filed in the above-entitled court on the 19th day of July, A. D. 1913, is hereby acknowledged, and receipt of true copies thereof on this 19th day of July, A. D. 1913, is also acknowledged.

J. H. COBB,

Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. July 19, 1913. By E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, 3d Division. July 29, 1913. By Arthur Lang, Clerk. By V. A. Paine, Deputy. [325]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order Certifying Up Papers Regarding  
Supersedeas Bond.**

This matter coming on for hearing on the motion of counsel for defendant to make all of the papers filed upon the application for supersedeas bond a part of the record to be forwarded to the Appellant Court, and said motion is allowed and is hereby ORDERED that the Stipulation heretofore entered into between the attorney representing the respective parties on the 30th day of June, A. D. 1913, respecting the stay of execution, etc., until the first day of August, A. D. 1913, also the affidavit of John R. Winn, the affidavit of R. J. Boryer, and the affidavit

of J. H. Cobb and the stenographer's notes of the admission of J. H. Cobb in open court concerning the supersedeas, and any and all papers connected with said application, are hereby made a part of the record of this case, and the Clerk is ordered to certify the same up on the Writ of Error herein.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. July 19th, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, 3d Division. July 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [326]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order to Transfer Records and Files to Third  
Division.**

The motion of R. J. Boryer, attorney for defendants herein, to transfer the records and files in the

above case to the Clerk of the Court of the Third Division, at Valdez, Alaska, in which said Records and files belong.

It is hereby ORDERED that the Clerk of the Court of the First Division forward forthwith the Records and Files in the above-entitled case to the Clerk of the Court, Third Division, at Valdez, Alaska.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By \_\_\_\_\_, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [327]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Order Allowing, Settling and Certifying Bill of Exceptions.**

It appearing to the Court that the defendants have prepared and duly served upon the attorney for the plaintiff herein, within due time, a proposed Bill of Exceptions, and the Judge of said Court having duly designated Saturday, the 19th day of July, 1913, as the time at which he would settle the Bill of Exceptions, and both parties having been informed of the time for settling the Bill of Exceptions as designated by the Judge, and the said matter coming regularly on for hearing for the purpose of settling the said Bill of Exceptions on the 19th day of July, 1913, and attorneys for both parties having been present:

It was, thereupon, and is hereby ordered that the proposed Bill of Exceptions be allowed, the same shall be and is hereby settled and allowed as a Bill of Exceptions herein and presented to the Judge of this Court for his certificate.

And it further appearing to the Court that said proposed Bill of Exceptions conforms to the truth and is in proper form, it is therefore ordered that the said bill is a true bill of exceptions, and the same is hereby approved, allowed and settled and ordered filed and made a part of the record of said cause, and that Plaintiff's Exhibits "A" to "H," inc., and Defendant's Exhibits 1 to 6, inc., the originals be sent to United States [328] Circuit Court of Appeals, 9th Circuit, because of their character cannot be inserted in this Bill of Exceptions.

Done in open court this the 19th day of July, A.D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [329]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY and KATALLA COM-  
PANY,

Defendants.

**Certificate to Bill of Exceptions.**

I, Fred M. Brown, Judge of the above-entitled court, do hereby certify that the above and foregoing Bill of Exceptions in the above-entitled cause is a true bill of exceptions, and the same had been approved, allowed and settled, and ordered filed and made a part of the record of said cause, and that *Plaintiff's* "A" to "H," inc., and Defendants' Exhibits 1 to 6, inc., the originals be sent to the United



States Circuit Court of Appeals, 9th Circuit, because of their character cannot be inserted in this Bill of Exceptions.

Done in open court this the 19th day of July, A. D. 1913.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 19, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [330]

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DEFENDANTS' ORIGINAL EXHIBITS ATTACHED—" 1, 2, 3, 4, 5, and 6." [331]

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[Defendants' Exhibit No. 1—Check No. A114,—Dated Cordova, Alaska, August 14, 1911, from Katalla Company to D. S. Reeder.]

Brass Check No. 394.

No. A114

KATALLA COMPANY.

In full payment wages month of  
Jul., 1911.

Cordova, Alaska, Aug. 14, 1911.

Pay to the Order of D. S. Reeder or Bearer \$114.80 One hundred and fourteen and 80/100 Dollars.

KATALLA COMPANY,  
E. J. DAVIS,  
Cashier.

S. Blum & Co.

**Bankers,**

Cordova, Alaska.

Countersigned: W. H. Bryant, Asst. Auditor.

[Stamped across face of check:] Pay Check. Not Over One Hundred Twenty \$120\$. Paid Aug. 15, 1911. S. Blum & Co., Bankers, Cordova, Alaska.

[Endorsed]: D. S. Reeder.

Defendant's Exhibit 1—Cause No. C.—42.

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[Defendants' Exhibit No. 2—Check No. A12076, Dated Cordova, Alaska, September 11, 1911, from Katalla Company to D. S. Reeder.]

Brass Check No. 394.

No. A12076.

KATALLA COMPANY.

In full payment wages month of August.

Cordova, Alaska, Sep. 11, 1911.

Pay to the Order of D. S. Reeder or Bearer \$35.50 Thirty-five 50/100 Dollars.

KATALLA COMPANY,

E. J. DAVIS,

Cashier.

S. Blum & Co.

**Bankers,**

Cordova, Alaska.

Countersigned: W. H. Bryant, Asst. Auditor.

[Stamped across face of check:] Pay Check. Not Over Forty Dollars \$40\$. Paid Sep. 22, 1911. S. Blum & Co., Bankers, Cordova, Alaska.

[Endorsed]: D. S. Reeder.

Defendant's Exhibit 2—Cause No. C.—42.

[Defendants' Exhibit No. 3—Check No. A10366,  
Dated Cordova, Alaska, July 11, 1911, from  
Katalla Company to D. S. Reeder.]

Brass Check No. C 394.

No. A10366.

KATALLA COMPANY.

In full payment wages month of  
Jun., 1911.

Cordova, Alaska, Jul. 11, 1911.

Pay to the Order of D. S. Reeder or Bearer  
\$103.45 One Hundred three and 45/100 Dollars.

KATALLA COMPANY,

E. J. DAVIS,

Cashier.

S. Blum & Co.

Bankers,

Cordova, Alaska.

Countersigned: W. H. Bryant, Asst. Auditor.

[Stamped across face of check:] Pay Check. Not  
Over One Hundred Twenty \$120\$. Paid Aug. 15,  
1911. S. Blum & Co., Bankers, Cordova, Alaska.

[Endorsed]: D. S. Reeder.

Defendant's Exhibit 3—Cause No. C.—42.

[Defendant's Exhibit No. 4—Draft No. 16604, Dated Cordova, Alaska, October 11, 1911, from Katalla Company to D. S. Reeder.]

Draft No. 16604

KATALLA COMPANY

Cordova, Alaska, Oct. 11th, 1911.

Pay to D. S. Reeder Or Order \$120.00 One hundred twenty and no/100 DOLLARS.

KATALLA COMPANY

E. J. DAVIS,

Cashier.

To ~~D. H. JARVIS, Treas.~~ S. Blum & Co.,

~~Lowman Building~~ Bankers.

~~SEATTLE, WASH.~~ Cordova, Alaska.

Countersigned: E. C. Hawkins, Chief Engineer.

[Stamped across face of draft:] Not over one hundred twenty \$120\$. Paid Oct. 11, 1911, S. Blum & Co., Bankers, Cordova, Alaska.

Do Not Alter or Detach any Part of this Voucher Draft.

Form KC 113.

Treas. No. ———

Draft No. 16604.

KATALLA COMPANY

Cordova, Alaska, Oct. 11th, 1911.

To D. S. Reeder, Payee.

Voucher No. 6414, Time allowed while in hospital, 120.00.

Charged to Audited Vouchers.

I certify that the above is a true copy of an original account, approved by the proper officer, that the same has been examined, found correct, registered and

filed in this department.

W. H. BRYANT,  
Asst. Auditor.

Receipt by endorsement on back. No other receipt is necessary.

All endorsements to be made below.

This Voucher Draft is to be accepted as a full settlement of within account.

D. S. REEDER.

Defendant's Exhibit 4. Cause No. C.—42

[Defendant's Exhibit No. 5—Draft No. 16676, Dated Cordova, Alaska, November 15, 1911, from Kattalla Company to D. S. Reeder.]

Draft No. 16676

KATALLA COMPANY

Cordova, Alaska, November 15th, 1911.

Pay to D. S. Reeder Or Order \$155.00 One hundred fifty five and no/100 Dollars.

KATALLA COMPANY

E. J. DAVIS,  
Cashier.

To ~~D. H. JARVIS~~, Treas.

~~Lowman Building~~

~~SEATTLE, WASH.~~

S. Blum & Co.,

Bankers,

Cordova, Alaska.

Countersigned: E. C. Hawkins, Chief Engineer.

Per Geo. Geiger.

[Stamped across face of draft:] Not over one hundred sixty \$160\$. Paid Nov. 16, 1911. S. Blum & Co., Bankers, Cordova, Alaska.

Do Not Alter or Detach any Part of this Voucher Draft.

Form KC 113.

Treas. No. ———

Draft No. 16676

KATALLA COMPANY

Cordova, Alaska, November 15th, 1911.

To D. S. Reeder, Payee.

Time allowance for month of October, 1911, 155.00.

Charged to Audited Vouchers.

I certify that the above is a true copy of an original account, approved by the proper officer, that the same has been examined, found correct, registered and filed in this department.

W. H. BRYANT,

Asst. Auditor.

Receipt by endorsement on back. No other receipt is necessary.

All endorsements to be made below.

This Voucher Draft is to be accepted as a full settlement of within account.

D. S. REEDER.

Defendant's Exhibit 5, Cause No. C.—42.





Form KC 113.

Treas. No. ———

Draft No. 16676

KATALLA COMPANY

Cordova, Alaska, November 15th, 1911.

To D. S. Reeder, Payee.

Time allowance for month of October, 1911, 155.00.

Charged to Audited Vouchers.

I certify that the above is a true copy of an original account, approved by the proper officer, that the same has been examined, found correct, registered and filed in this department.

W. H. BRYANT,  
Asst. Auditor.

Receipt by endorsement on back. No other receipt is necessary.

All endorsements to be made below.

This Voucher Draft is to be accepted as a full settlement of within account.

D. S. REEDER.

Defendant's Exhibit 5, Cause No. C.—42.



ca

PLAINTIFF'S  
~~DEFENDANT'S~~

EXHIBIT

a

CAUSE NO.

642

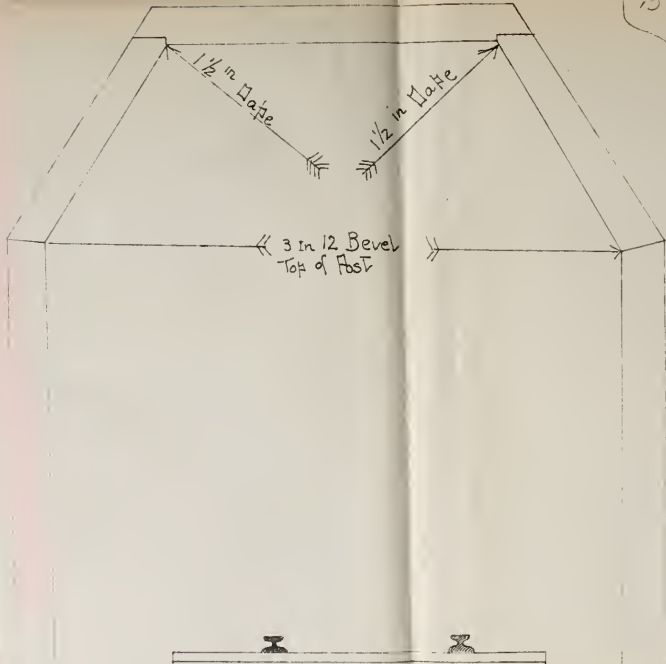
W



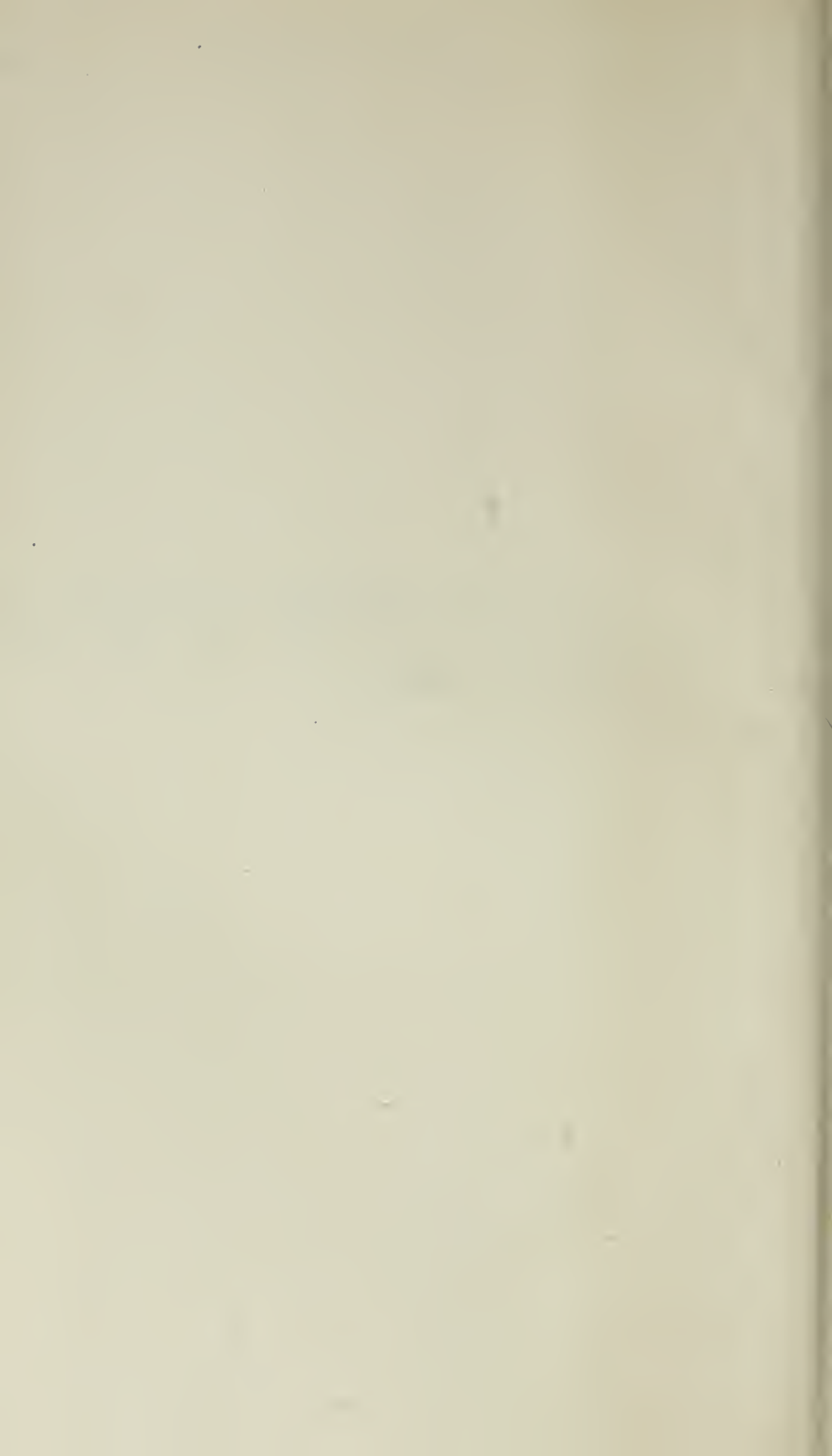
PLAINTIFF'S ORIGINAL EXHIBITS AT-  
TACHED—"A," "B," "C," "D," "E," "F,"  
"G" and "H." [332]







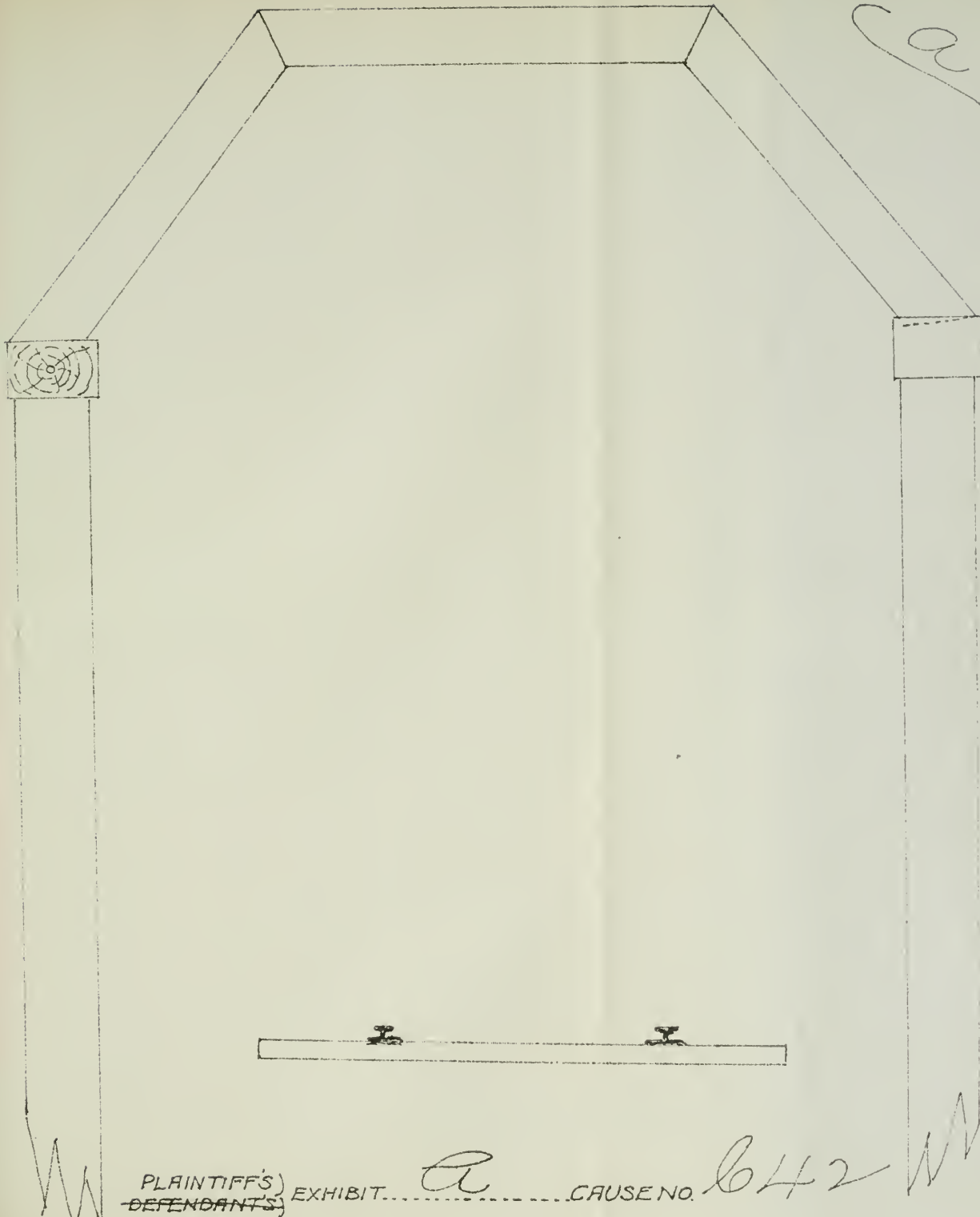
PLAINTIFFS) EXHIBIT. B ..... CASE NO. 642-  
 DEFENDANTS)







ca



PLAINTIFF'S  
DEFENDANT'S

EXHIBIT.....

a

CAUSE NO.

642





















# CONDITIONS AGREED UPON BY THE SHIPPER

1. The said property is received, and shall be held, carried and delivered by the carrier, and by all connecting carriers, and every service to be performed under this instrument shall be subject to all the stipulations and of the carrier's published freight tariff, and to all the conditions, whether printed or written, in this instrument, under which stipulations rates are quoted and the property is received for transportation, and all of which are hereby agreed to by the shipper, and by him accepted for himself and assigns.

2. The steamer or steamers on which the property herein described, or any thereof, shall be forwarded, shall have leave to tow and assist screws or other vessels, to sail with or without pilots, to trans-ship to any of the carrier's steamers, or steamers employed by the carrier, to lighten from steamer to steamer, or to and from steamers and shore, to transfer to and from hulks, to ship by other carriers or conveyance the goods destined for ports or places off the route or beyond the port of discharge of said steamer, but under no circumstances shall the carrier or the vessel be held responsible for any damage to or loss of said property, or any thereof, after the same shall be unhooked from the vessel's tackle.

3. No carrier, vessel or party in possession of all or any of the property hereinbefore described, shall be liable for any loss thereof, or damage thereto, occasioned by causes beyond its or their control, or the perils of the sea, lakes, rivers or other waters, or by fire, from any cause or wheresoever occurring; by battery of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers of people, or any de facto authority, by riot, strikes, lockouts or stoppage of labor, by explosions, bursting of boilers, breakage of shafts, or any latent defect in hulls, machinery or appurtenances; by collisions, stranding, or any other accidents of navigation, default or error in judgment of pilot, master, mariners, or other servants of the ship owners, steamboat or other water craft transporting the whole or any part of said property, not resulting, however, in any case, from want of due diligence by the owners of the ship or other vessels, or any of them, or by the ship's husband or manager, or for any loss or damage by leakage, breakage, chafing, loss of weight, changes in weather, heat, frost, wet or decay, or from any cause when such property is being carried upon the vessel's deck or upon open cars, if it be necessary, or usual, to so carry the same.

4. No carrier or vessel shall be responsible for leakage of oils, liquors or other liquids, injury to or breakage of any property packed in boxes, looking glasses, show cases or picture frames, stoves, hollow-ware or other frail castings, nor for injury to or breakage of any property packed in boxes, barrels, crates or bales, when such packages do not present evidence of rough handling or improper stowage; nor for any injury to or breakage of the hidden contents of packages, or resulting from the fragile nature of the freight, or from chafing, wet or rust resulting from the imperfect or insecure packing, or insufficient coopeage, or from the result of shipping without packing, nor for loss in weight of coffee, grain or other freight packed in bags, nor for loss of weight of rice in tierces, sugar in barrels, nor for the decay of perishable articles or damage to any article arising from the effects of heat or cold, sweating or fermentation, or by reason of its own inherent vice or liability, nor for loss or damage resulting from providential causes, nor for damage to tobacco by stains to packages, or damage to cargo by vermin, burning or explosion of articles of freight, or otherwise or loss or damage on account of inaccuracy or omission in marks or description, nor for unavoidable detention or delay.

5. The carrier is not bound to carry said property, or any thereof, by any particular train or vessel, or in time to meet any particular train or vessel, or in time for any particular market-time, season, trade, business venture or enterprise or otherwise than with as reasonable dispatch as its general business will permit; and if found necessary the carrier shall have the right to carry or forward the property by any other railroad, route, steamer or vessel between the points of shipment and the point of destination.

6. The property shall be received by the consignee thereof or connecting carrier, at the vessel's tackle immediately on arrival of the vessel at the port or place where same is to be discharged by the vessel, without regard to the weather; but if the consignee, or connecting carrier, is not on hand to receive the property as discharged, then the carrier may deliver it to a wharfinger or other party or person believed by the carrier to be responsible, and who will take charge of the property and pay freight on same, or the same may be kept on board, or landed and stored, or stored in hulks or put in lighters by carrier, at the expense and risk of the owner, shipper or consignee, and at his, or their, risk of any nature whatsoever, and further, that in case the vessel should be prevented by stress of weather, or other cause, from entering the port or place of discharge or delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent, be conveyed upon the vessel to the nearest or other port and thence returned to port of delivery by the same, or other vessel, subject to all the provisions of this instrument in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

7. Goods covered by this instrument may be carried on the Copper River, or any of its tributaries, the Chitina River, or any of its tributaries, including lakes, by any craft, whether operated by its own motive power, or otherwise, that is registered under the United States authority, and the words "steamer" or "vessel" when used in this instrument mean any such craft.

8. Each of the companies carrying the goods shall only be liable for loss or damage occurring on its own particular line or vessel, or its portion of the place and time of shipment, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at the point of delivery, promptly after arrival of property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier under this instrument shall be liable in any event. Any carrier, vessel or party liable on account of loss or damage to said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.

9. All property shall be subject to necessary coopeage, baling, boxing or re-boxing, at owner's cost, as well as warehouse storage, customs dues, customs brokers' and bonding charges.

**[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.].**

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C.—42.

DANIEL S. REEDER,

Plaintiff,

vs.

KATALLA COMPANY, a Corporation, and COP-  
PER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY, a Corporation,

Defendants.

To the Clerk of the Above Court:

You will please make, certify and transmit forth-  
with to the United States Circuit Court of Appeals  
for the Ninth Judicial Circuit, at San Francisco,  
California, a copy of the record in the above-entitled  
cause as a return to the Writ of Error heretofore  
sued out of said Circuit Court of Appeals to review  
the judgment in said cause, consisting of the follow-  
ing files, records and proceedings in said cause:

Complaint and Summons.

Marshal's Return on Summons.

Motion to Make More Definite and Certain.

Bill of Particulars.

Minute Order to Amend.

Answer—Copper River & Northwestern Railway  
Company.

Answer—Katalla Company.

Reply to Affirmative Answer of Both Defendants.

Motion for Nonsuit by Katalla Company.

Motion for Nonsuit by Copper River & Northwestern Railway Company.

Motion for Directed Verdict Katalla Company.

Motion for Directed Verdict Copper River & Northwestern Railway Company.

Verdict.

Motion for New Trial by Katalla Company.

Motion for New Trial by Copper River & Northwestern Railway Company.

Plaintiff's Request for Instructions. [333]

Defendant's Request for Instructions.

Defendants' Exceptions to Court's Instructions to Jury.

Judgment.

Minute Order Denying Motion for New Trial.

Minute Order Fixing Time to File and Present Bill of Exceptions and Stay of Execution.

Notice of Attorney's Lien.

Petition for Writ of Error.

Order Allowing Writ of Error.

Order Transferring Records to Third Division.

Order to Transmit Original Exhibits.

Order on Supersedeas Bond.

Order Staying Execution.

Affidavits in Support of Supersedeas Bond of Winn, Boryer and Cobb.

Assignment of Error.

Stipulation.

Bill of Exceptions.

Order Allowing, Settling and Certifying Bill of Exceptions.



Bond on Writ of Error.

Acknowledgment of Service of Papers on Writ of Error.

Certificate to Bill of Exceptions.

Writ of Error and Copy.

Citation and Copy.

Order Certifying Up Papers Regarding Supersedeas Bond.

This Praeceptum.

R. J. BORYER,

Attorney for Defendants.

Dated August 1st, A. D. 1913.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 2, 1913. Arthur Lang, Clerk. By \_\_\_\_\_, Deputy. [334]

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*In the District Court for the Territory of Alaska,  
Third Division.*

United States of America,  
Territory of Alaska,  
Third Division,—ss.

**Praeceptum for Transcript [on Return to Writ of Error].**

I, Arthur Lang, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the above and foregoing and hereto annexed 334 pages, numbered from 1 to 334, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office; that this transcript is made in accord-

ance with the praecipe filed in my office on the 2d day of August, A. D. 1913.

That I hereby certify that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$136.80, has been paid to me by R. J. Boryer, Esq., one of the attorneys for the defendants and appellants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 2d day of August, A. D. 1913.

[Seal]

ARTHUR LANG,

Clerk. [335]

[Endorsed]: No. 2299. United States Circuit Court of Appeals for the Ninth Circuit. Copper River & Northwestern Railway Company, a Corporation, and Katalla Company, a Corporation, Plaintiffs in Error, vs. Daniel S. Reeder, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed August 11, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.